STATE NORMAL SCHOOL,
LOS ANGELES, CAL.

JOHN JAY

First Chief Justice of the United States

From the original painting by Chappel.

STATE NORMAL SCHOOL,

THE FEDERALIST

A COMMENTARY ON THE CONSTITUTION OF THE UNITED STATES

BEING A

COLLECTION OF ESSAYS

WRITTEN BY

ALEXANDER HAMILTON, JAMES MADISON AND JOHN JAY

In Support of the Constitution Agreed Upon September 17, 1787, by the Federal Convention

WITH AN INTRODUCTION BY

EDWARD GAYLORD BOURNE, Ph.D.

Professor of History Yale University.

VOLUME II.

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JOHN JAY . . . . . *Frontispiece*
First Chief Justice of the United States. From the original painting by Chappel.

ST. STEPHEN'S HALL — HOUSE OF PARLIAMENT . . . *Frontispiece*
to English Constitution

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For the Independent Journal.

THE FEDERALIST. No. LXIII.

(HAMILTON OR MADISON.)

1130

To the People of the State of New York:

A FIFTH desideratum, illustrating the utility of a senate, is the want of a due sense of national character. Without a select and stable member of the government, the esteem of foreign powers will not only be forfeited by an unenlightened and variable policy, proceeding from the causes already mentioned, but the national councils will not possess that sensibility to the opinion of the world, which is perhaps not less necessary in order to merit, than it is to obtain, its respect and confidence.

An attention to the judgment of other nations is important to every government for two reasons: the one is, that, independently of the merits of any particular plan or measure, it is desirable, on various accounts, that it should appear to other nations as the offspring of a wise and honorable policy; the second is, that in doubtful cases, particularly where the national councils may be warped by some strong passion or momentary interest, the presumed or known opinion of the impartial world may be the best guide that can be followed. What has not America lost by her want of character with foreign nations; and how many errors and follies would she not have avoided, if the justice and propriety of her measures had, in every instance, been previously tried by the light in which they would probably appear to the unbiased part of mankind?

Yet however requisite a sense of national character may be, it is evident that it can never be sufficiently possessed by a numerous and changeable body. It can only be found in a number so small that a sensible

degree of the praise and blame of public measures may be the portion of each individual; or in an assembly so durably invested with public trust, that the pride and consequence of its members may be sensibly incorporated with the reputation and prosperity of the community. The half-yearly representatives of Rhode Island would probably have been little affected in their deliberations on the iniquitous measures of that State, by arguments drawn from the light in which such measures would be viewed by foreign nations, or even by the sister States; whilst it can scarcely be doubted that if the concurrence of a select and stable body had been necessary, a regard to national character alone would have prevented the calamities under which that misguided people is now laboring.

I add, as a SIXTH defect the want, in some important cases, of a due responsibility in the government to the people, arising from that frequency of elections which in other cases produces this responsibility. This remark will, perhaps, appear not only new, but paradoxical. It must nevertheless be acknowledged, when explained, to be as undeniable as it is important.

Responsibility, in order to be reasonable, must be limited to objects within the power of the responsible party, and in order to be effectual, must relate to operations of that power, of which a ready and proper judgment can be formed by the constituents. The objects of government may be divided into two general classes: the one depending on measures which have singly an immediate and sensible operation; the other depending on a succession of well-chosen and well-connected measures, which have a gradual and perhaps unobserved operation. The importance of the latter description to the collective and permanent welfare of every country, needs no explanation. And yet it is evident that an assembly elected for so short a term as to be unable to provide more than one or two links in a chain of measures, on which the general welfare may essentially depend, ought not to be

answerable for the final result, any more than a steward or tenant, engaged for one year, could be justly made to answer for places or improvements which could not be accomplished in less than half a dozen years. Nor is it possible for the people to estimate the SHARE of influence which their annual assemblies may respectively have on events resulting from the mixed transactions of several years. It is sufficiently difficult to preserve a personal responsibility in the members of a NUMEROUS body, for such acts of the body as have an immediate, detached, and palpable operation on its constituents.

The proper remedy for this defect must be an additional body in the legislative department, which, having sufficient permanency to provide for such objects as require a continued attention, and a train of measures, may be justly and effectually answerable for the attainment of those objects.

Thus far I have considered the circumstances which point out the necessity of a well-constructed Senate only as they relate to the representatives of the people. To a people as little blinded by prejudice or corrupted by flattery as those whom I address, I shall not scruple to add, that such an institution may be sometimes necessary as a defense to the people against their own temporary errors and delusions. As the cool and deliberate sense of the community ought, in all governments, and actually will, in all free governments, ultimately prevail over the views of its rulers; so there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind? What bitter anguish would not the people of Athens have often

escaped if their government had contained so provident a safeguard against the tyranny of their own passions? Popular liberty might then have escaped the indelible reproach of decreeing to the same citizens the hemlock on one day and statues on the next.

It may be suggested, that a people spread over an extensive region cannot, like the crowded inhabitants of a small district, be subject to the infection of violent passions, or to the danger of combining in pursuit of unjust measures. I am far from denying that this is a distinction of peculiar importance. I have, on the contrary, endeavored in a former paper to show, that it is one of the principal recommendations of a confederated republic. At the same time, this advantage ought not to be considered as superseding the use of auxiliary precautions. It may even be remarked, that the same extended situation, which will exempt the people of America from some of the dangers incident to lesser republics, will expose them to the inconveniency of remaining for a longer time under the influence of those misrepresentations which the combined industry of interested men may succeed in distributing among them.

It adds no small weight to all these considerations, to recollect that history informs us of no long-lived republic which had not a senate. Sparta, Rome, and Carthage are, in fact, the only states to whom that character can be applied. In each of the two first there was a senate for life. The constitution of the senate in the last is less known. Circumstantial evidence makes it probable that it was not different in this particular from the two others. It is at least certain, that it had some quality or other which rendered it an anchor against popular fluctuations; and that a smaller council, drawn out of the senate, was appointed not only for life, but filled up vacancies itself. These examples, though as unfit for the imitation, as they are repugnant to the genius, of America, are, notwithstanding, when compared with the fugitive and turbulent existence of other ancient republics, very instructive proofs of the necessity of some

institution that will blend stability with liberty. I am not unaware of the circumstances which distinguish the American from other popular governments, as well ancient as modern; and which render extreme circumspection necessary, in reasoning from the one case to the other. But after allowing due weight to this consideration, it may still be maintained, that there are many points of similitude which render these examples not unworthy of our attention. Many of the defects, as we have seen, which can only be supplied by a senatorial institution, are common to a numerous assembly frequently elected by the people, and to the people themselves. There are others peculiar to the former, which require the control of such an institution. The people can never wilfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men, than where the concurrence of separate and dissimilar bodies is required in every public act.

The difference most relied on, between the American and other republics, consists in the principle of representation; which is the pivot on which the former move, and which is supposed to have been unknown to the latter, or at least to the ancient part of them. The use which has been made of this difference, in reasonings contained in former papers, will have shown that I am disposed neither to deny its existence nor to undervalue its importance. I feel the less restraint, therefore, in observing, that the position concerning the ignorance of the ancient governments on the subject of representation, is by no means precisely true in the latitude commonly given to it. Without entering into a disquisition which here would be misplaced, I will refer to a few known facts, in support of what I advance.

In the most pure democracies of Greece, many of the executive functions were performed, not by the people themselves, but by officers elected by the people, and REPRESENTING the people in their EXECUTIVE capacity.

Prior to the reform of Solon, Athens was governed by nine Archons, annually ELECTED BY THE PEOPLE AT LARGE. The degree of power delegated to them seems to be left in great obscurity. Subsequent to that period, we find an assembly, first of four, and afterwards of six hundred members, annually ELECTED BY THE PEOPLE; and PARTIALLY representing them in their LEGISLATIVE capacity, since they were not only associated with the people in the function of making laws, but had the exclusive right of originating legislative propositions to the people. The senate of Carthage, also, whatever might be its power, or the duration of its appointment, appears to have been ELECTIVE by the suffrages of the people. Similar instances might be traced in most, if not all the popular governments of antiquity.

Lastly, in Sparta we meet with the Ephori, and in Rome with the Tribunes; two bodies, small indeed in numbers, but annually ELECTED BY THE WHOLE BODY OF THE PEOPLE, and considered as the REPRESENTATIVES of the people, almost in their PLENIPOTENTIARY capacity. The Cosmi of Crete were also annually ELECTED BY THE PEOPLE, and have been considered by some authors as an institution analogous to those of Sparta and Rome, with this difference only, that in the election of that representative body the right of suffrage was communicated to a part only of the people.

From these facts, to which many others might be added, it is clear that the principle of representation was neither unknown to the ancients nor wholly overlooked in their political constitutions. The true distinction between these and the American governments, lies IN THE TOTAL EXCLUSION OF THE PEOPLE, IN THEIR COLLECTIVE CAPACITY, from any share in the LATTER, and not in the TOTAL EXCLUSION OF THE REPRESENTATIVES OF THE PEOPLE from the administration of the FORMER. The distinction, however, thus qualified, must be admitted to leave a most advantageous superiority in favor of the United States. But to insure to this advantage its full effect, we must be careful not to separate it from the other advantage, of an extensive territory. For it cannot be believed, that any form of

representative government could have succeeded within the narrow limits occupied by the democracies of Greece.

In answer to all these arguments, suggested by reason, illustrated by examples, and enforced by our own experience, the jealous adversary of the Constitution will probably content himself with repeating, that a senate appointed not immediately by the people, and for the term of six years, must gradually acquire a dangerous pre-eminence in the government, and finally transform it into a tyrannical aristocracy.

To this general answer, the general reply ought to be sufficient, that liberty may be endangered by the abuses of liberty as well as by the abuses of power; that there are numerous instances of the former as well as of the latter; and that the former, rather than the latter, are apparently most to be apprehended by the United States. But a more particular reply may be given.

Before such a revolution can be effected, the Senate, it is to be observed, must in the first place corrupt itself; must next corrupt the State legislatures; must then corrupt the House of Representatives; and must finally corrupt the people at large. It is evident that the Senate must be first corrupted before it can attempt an establishment of tyranny. Without corrupting the State legislatures, it cannot prosecute the attempt, because the periodical change of members would otherwise regenerate the whole body. Without exerting the means of corruption with equal success on the House of Representatives, the opposition of that coequal branch of the government would inevitably defeat the attempt; and without corrupting the people themselves, a succession of new representatives would speedily restore all things to their pristine order. Is there any man who can seriously persuade himself that the proposed Senate can, by any possible means within the compass of human address, arrive at the object of a lawless ambition, through all these obstructions?

If reason condemns the suspicion, the same sentence is pronounced by experience. The constitution of Maryland furnishes the most apposite example. The Senate of that

State is elected, as the federal Senate will be, indirectly by the people, and for a term less by one year only than the federal Senate. It is distinguished, also, by the remarkable prerogative of filling up its own vacancies within the term of its appointment, and, at the same time, is not under the control of any such rotation as is provided for the federal Senate. There are some other lesser distinctions, which would expose the former to colorable objections, that do not lie against the latter. If the federal Senate, therefore, really contained the danger which has been so loudly proclaimed, some symptoms at least of a like danger ought by this time to have been betrayed by the Senate of Maryland, but no such symptoms have appeared. On the contrary, the jealousies at first entertained by men of the same description with those who view with terror the correspondent part of the federal Constitution, have been gradually extinguished by the progress of the experiment; and the Maryland constitution is daily deriving, from the salutary operation of this part of it, a reputation in which it will probably not be rivalled by that of any State in the Union.

But if any thing could silence the jealousies on this subject, it ought to be the British example. The Senate there instead of being elected for a term of six years, and of being unconfined to particular families or fortunes, is an hereditary assembly of opulent nobles. The House of Representatives, instead of being elected for two years, and by the whole body of the people, is elected for seven years, and, in very great proportion, by a very small proportion of the people. Here, unquestionably, ought to be seen in full display the aristocratic usurpations and tyranny which are at some future period to be exemplified in the United States. Unfortunately, however, for the anti-federal argument, the British history informs us that this hereditary assembly has not been able to defend itself against the continual encroachments of the House of Representatives; and that it no sooner lost the support of the monarch, than it was actually crushed by the weight of the popular branch.

As far as antiquity can instruct us on this subject, its examples support the reasoning which we have employed. In Sparta, the Ephori, the annual representatives of the people, were found an overmatch for the senate for life, continually gained on its authority and finally drew all power into their own hands. The Tribunes of Rome, who were the representatives of the people, prevailed, it is well known, in almost every contest with the senate for life, and in the end gained the most complete triumph over it. The fact is the more remarkable, as unanimity was required in every act of the Tribunes, even after their number was augmented to ten. It proves the irresistible force possessed by that branch of a free government, which has the people on its side. To these examples might be added that of Carthage, whose senate, according to the testimony of Polybius, instead of drawing all power into its vortex, had, at the commencement of the second Punic War, lost almost the whole of its original portion.

Besides the conclusive evidence resulting from this assemblage of facts, that the federal Senate will never be able to transform itself, by gradual usurpations, into an independent and aristocratic body, we are warranted in believing, that if such a revolution should ever happen from causes which the foresight of man cannot guard against, the House of Representatives, with the people on their side, will at all times be able to bring back the Constitution to its primitive form and principles. Against the force of the immediate representatives of the people, nothing will be able to maintain even the constitutional authority of the Senate, but such a display of enlightened policy, and attachment to the public good, as will divide with that branch of the legislature the affections and support of the entire body of the people themselves.

PUBLIUS.

From the New York Packet, Friday, March 7, 1788.

THE FEDERALIST. No. LXIV.

(JAY.)

To the People of the State of New York:

It is a just and not a new observation, that enemies to particular persons, and opponents to particular measures, seldom confine their censures to such things only in either as are worthy of blame. Unless on this principle, it is difficult to explain the motives of their conduct, who condemn the proposed Constitution in the aggregate, and treat with severity some of the most unexceptionable articles in it.

The second section gives power to the President, "by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur."

The power of making treaties is an important one, especially as it relates to war, peace, and commerce; and it should not be delegated but in such a mode, and with such precautions, as will afford the highest security that it will be exercised by men the best qualified for the purpose, and in the manner most conducive to the public good. The convention appears to have been attentive to both these points: they have directed the President to be chosen by select bodies of electors, to be deputed by the people for that express purpose; and they have committed the appointment of senators to the State legislatures. This mode has, in such cases, vastly the advantage of elections by the people in their collective capacity, where the activity of party zeal, taking the advantage of the supineness, the ignorance, and the hopes and fears of the unwary and interested, often places men in office by the votes of a small proportion of the electors.

As the select assemblies for choosing the President, as well as the State legislatures who appoint the senators, will in general be composed of the most enlightened and respectable citizens, there is reason to presume that their attention and their votes will be directed to those men only who have become the most distinguished by their abilities and virtue, and in whom the people perceive just grounds for confidence. The Constitution manifests very particular attention to this object. By excluding men under thirty-five from the first office, and those under thirty from the second, it confines the electors to men of whom the people have had time to form a judgment, and with respect to whom they will not be liable to be deceived by those brilliant appearances of genius and patriotism, which, like transient meteors, sometimes mislead as well as dazzle. If the observation be well founded, that wise kings will always be served by able ministers, it is fair to argue, that as an assembly of select electors possess, in a greater degree than kings, the means of extensive and accurate information relative to men and characters, so will their appointments bear at least equal marks of discretion and discernment. The inference which naturally results from these considerations is this, that the President and senators so chosen will always be of the number of those who best understand our national interests, whether considered in relation to the several States or to foreign nations, who are best able to promote those interests, and whose reputation for integrity inspires and merits confidence. With such men the power of making treaties may be safely lodged.

Although the absolute necessity of system, in the conduct of any business, is universally known and acknowledged, yet the high importance of it in national affairs has not yet become sufficiently impressed on the public mind. They who wish to commit the power under consideration to a popular assembly, composed of members constantly coming and going in quick succession, seem not to recollect that such a body must

necessarily be inadequate to the attainment of those great objects, which require to be steadily contemplated in all their relations and circumstances, and which can only be approached and achieved by measures which not only talents, but also exact information, and often much time, are necessary to concert and to execute. It was wise, therefore, in the convention to provide, not only that the power of making treaties should be committed to able and honest men, but also that they should continue in place a sufficient time to become perfectly acquainted with our national concerns, and to form and introduce a system for the management of them. The duration prescribed is such as will give them an opportunity of greatly extending their political information, and of rendering their accumulating experience more and more beneficial to their country. Nor has the convention discovered less prudence in providing for the frequent elections of senators in such a way as to obviate the inconvenience of periodically transferring those great affairs entirely to new men; for by leaving a considerable residue of the old ones in place, uniformity and order, as well as a constant succession of official information will be preserved.

There are a few who will not admit that the affairs of trade and navigation should be regulated by a system cautiously formed and steadily pursued; and that both our treaties and our laws should correspond with and be made to promote it. It is of much consequence that this correspondence and conformity be carefully maintained; and they who assent to the truth of this position will see and confess that it is well provided for by making concurrence of the Senate necessary both to treaties and to laws.

It seldom happens in the negotiation of treaties, of whatever nature, but that perfect SECRECY and immediate DESPATCH are sometimes requisite. These are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. Those apprehensions will operate on those per-

sons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions, who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular Assembly. The convention have done well, therefore, in so disposing of the power of making treaties, that although the President must, in forming them, act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such a manner as prudence may suggest.

They who have turned their attention to the affairs of men, must have perceived that there are tides in them; tides very irregular in their duration, strength, and direction, and seldom found to run twice exactly in the same manner or measure. To discern and to profit by these tides in national affairs is the business of those who preside over them; and they who have had much experience on this head inform us, that there frequently are occasions when days, nay, even when hours, are precious. The loss of a battle, the death of a prince, the removal of a minister, or other circumstances intervening to change the present posture and aspect of affairs, may turn the most favorable tide into a course opposite to our wishes. As in the field, so in the cabinet, there are moments to be seized as they pass, and they who preside in either should be left in capacity to improve them. So often and so essentially have we heretofore suffered from the want of secrecy and despatch, that the Constitution would have been inexcusably defective, if no attention had been paid to those objects. Those matters which in negotiations usually require the most secrecy and the most despatch, are those preparatory and auxiliary measures which are not otherwise important in a national view, than as they tend to facilitate the attainment of the objects of the negotiation. For these, the President will find no difficulty to provide; and should any circumstance occur which requires the advice and consent of the Senate, he may at any time convene them. Thus we see that the Constitution provides that our negotiations for treaties shall have every advan-

tage which can be derived from talents, information, integrity, and deliberate investigations, on the one hand, and from secrecy and despatch on the other.

But to this plan, as to most others that have ever appeared, objections are contrived and urged.

Some are displeased with it, not on account of any errors or defects in it, but because, as the treaties, when made, are to have the force of laws, they should be made only by men invested with legislative authority. These gentlemen seem not to consider that the judgments of our courts, and the commissions constitutionally given by our governor, are as valid and as binding on all persons whom they concern, as the laws passed by our legislature. All constitutional acts of power, whether in the executive or in the judicial department, have as much legal validity and obligation as if they proceeded from the legislature; and therefore, whatever name be given to the power of making treaties, or however obligatory they may be when made, certain it is, that the people may, with much propriety, commit the power to a distinct body from the legislature, the executive, or the judicial. It surely does not follow, that because they have given the power of making laws to the legislature, that therefore they should likewise give them the power to do every other act of sovereignty by which the citizens are to be bound and affected.

Others, though content that treaties should be made in the mode proposed, are averse to their being the SUPREME laws of the land. They insist, and profess to believe, that treaties like acts of assembly, should be repealable at pleasure. This idea seems to be new and peculiar to this country, but new errors, as well as new truths, often appear. These gentlemen would do well to reflect that a treaty is only another name for a bargain, and that it would be impossible to find a nation who would make any bargain with us, which should be binding on them ABSOLUTELY, but on us only so long and so far as we may think proper to be bound by it. They who make laws may, without doubt, amend or repeal

them; and it will not be disputed that they who make treaties may alter or cancel them; but still let us not forget that treaties are made, not by only one of the contracting parties, but by both; and consequently, that as the consent of both was essential to their formation at first, so must it ever afterwards be to alter or cancel them. The proposed Constitution, therefore, has not in the least extended the obligation of treaties. They are just as binding, and just as far beyond the lawful reach of legislative acts now, as they will be at any future period, or under any form of government.

However useful jealousy may be in republics, yet when like bile in the natural, it abounds too much in the body politic, the eyes of both become very liable to be deceived by the delusive appearances which that malady casts on surrounding objects. From this cause, probably, proceed the fears and apprehensions of some, that the President and Senate may make treaties without an equal eye to the interests of all the States. Others suspect that two thirds will oppress the remaining third, and ask whether those gentlemen are made sufficiently responsible for their conduct; whether, if they act corruptly, they can be punished; and if they make disadvantageous treaties, how are we to get rid of those treaties?

As all the States are equally represented in the Senate, and by men the most able and the most willing to promote the interests of their constituents, they will all have an equal degree of influence in that body, especially while they continue to be careful in appointing proper persons, and to insist on their punctual attendance. In proportion as the United States assume a national form and a national character, so will the good of the whole be more and more an object of attention, and the government must be a weak one indeed, if it should forget that the good of the whole can only be promoted by advancing the good of each of the parts or members which compose the whole. It will not be in the power of the President and Senate to make any treaties by which they and their families and estates will not be equally bound and affected with the rest of the

community; and, having no private interests distinct from that of the nation, they will be under no temptations to neglect the latter.

As to corruption, the case is not supposable. He must either have been very unfortunate in his intercourse with the world, or possess a heart very susceptible of such impressions, who can think it probable that the President and two thirds of the Senate will ever be capable of such unworthy conduct. The idea is too gross and too invidious to be entertained. But in such a case, if it should ever happen, the treaty so obtained from us would, like all other fraudulent contracts, be null and void by the law of nations.

With respect to their responsibility, it is difficult to conceive how it could be increased. Every consideration that can influence the human mind, such as honor, oaths, reputations, conscience, the love of country, and family affections and attachments, afford security for their fidelity. In short, as the Constitution has taken the utmost care that they shall be men of talents and integrity, we have reason to be persuaded that the treaties they make will be as advantageous as, all circumstances considered, could be made; and so far as the fear of punishment and disgrace can operate, that motive to good behavior is amply afforded by the article on the subject of impeachments.

PUBLIUS.

From the New York Packet, Friday, March 7, 1788.

THE FEDERALIST. No. LXV.

(HAMILTON.)

To the People of the State of New York:

The remaining powers which the plan of the convention allots to the Senate, in a distinct capacity, are comprised in their participation with the executive in the appointment to offices, and in their judicial character as a court for the trial of impeachments. As in the business of appointments the executive will be the principal agent, the provisions relating to it will most properly be discussed in the examination of that department. We will, therefore, conclude this head with a view of the judicial character of the Senate.

A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself. The prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.

The delicacy and magnitude of a trust which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs, speak for themselves. The difficulty of placing it rightly, in a government resting entirely on the basis of periodical elections, will as readily be perceived, when it is considered that the most conspicuous characters in it will, from that circumstance, be too often the leaders or the tools of the most cunning or the most numerous faction, and on this account, can hardly be expected to possess the requisite neutrality towards those whose conduct may be the subject of scrutiny.

The convention, it appears, thought the Senate the most fit depositary of this important trust. Those who can best discern the intrinsic difficulty of the thing, will be least hasty in condemning that opinion, and will be most inclined to allow due weight to the arguments which may be supposed to have produced it.

What, it may be asked, is the true spirit of the institution itself? Is it not designed as a method of NATIONAL INQUEST into the conduct of public men? If this be the design of it, who can so properly be the inquisitors for the nation as the representatives of the nation themselves? It is not disputed that the power of originating the inquiry, or, in other words, of preferring the impeachment, ought to be lodged in the hands of one branch of the legislative body. Will not the reasons which indicate the propriety of this arrangement strongly plead for an admission of the other branch of that body to a share of the inquiry? The model from which the idea of this institution has been borrowed, pointed out that course to the convention. In Great Britain it is the province of the House of Commons to prefer the impeachment, and of the House of Lords to decide upon it. Several of the State constitutions have followed the example. As well the latter, as the former, seem to have regarded the practice of impeachments as a bridle in the hands of the legislative body upon the executive servants of the government. Is not this the true light in which it ought to be regarded?

Where else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel CONFIDENCE ENOUGH IN ITS OWN SITUATION, to preserve, unawed and uninfluenced, the necessary impartiality between an INDIVIDUAL accused, and the REPRESENTATIVES OF THE PEOPLE, HIS ACCUSERS?

Could the Supreme Court have been relied upon as answering this description? It is much to be doubted, whether the members of that tribunal would at all times be endowed with so eminent a portion of fortitude, as would be called for in the execution of so difficult a task; and it is still more to be doubted, whether they would possess the degree of credit and authority, which might, on certain occasions, be indispensable towards reconciling the people to a decision that should happen to clash with an accusation brought by their immediate representatives. A deficiency in the first, would be fatal to the accused; in the last, dangerous to the public tranquillity. The hazard in both these respects, could only be avoided, if at all, by rendering that tribunal more numerous than would consist with a reasonable attention to economy. The necessity of a numerous court for the trial of impeachments, is equally dictated by the nature of the proceeding. This can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors, or in the construction of it by the judges, as in common cases serve to limit the discretion of courts in favor of personal security. There will be no jury to stand between the judges who are to pronounce the sentence of the law, and the party who is to receive or suffer it. The awful discretion which a court of impeachments must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished characters of the community, forbids the commitment of the trust to a small number of persons.

These considerations seem alone sufficient to authorize a conclusion, that the Supreme Court would have been an improper substitute for the Senate, as a court of impeach-

ments. There remains a further consideration, which will not a little strengthen this conclusion. It is this: The punishment which may be the consequence of conviction upon impeachment, is not to terminate the chastisement of the offender. After having been sentenced to a prepetual ostracism from the esteem and confidence, and honors and emoluments of his country, he will still be liable to prosecution and punishment in the ordinary course of law. Would it be proper that the persons who had disposed of his fame, and his most valuable rights as a citizen in one trial, should, in another trial, for the same offense, be also the disposers of his life and his fortune? Would there not be the greatest reason to apprehend, that error, in the first sentence, would be the parent of error in the second sentence? That the strong bias of one decision would be apt to overrule the influence of any new lights which might be brought to vary the complexion of another decision? Those who know anything of human nature, will not hesitate to answer these questions in the affirmative; and will be at no loss to perceive, that by making the same persons judges in both cases, those who might happen to be the objects of prosecution would, in a great measure, be deprived of the double security intended them by a double trial. The loss of life and estate would often be virtually included in a sentence which, in its terms, imported nothing more than dismission from a present, and disqualification for a future, office. It may be said, that the intervention of a jury, in the second instance, would obviate the danger. But juries are frequently influenced by the opinions of judges. They are sometimes induced to find special verdicts, which refer the main question to the decision of the court. Who would be willing to stake his life and his estate upon the verdict of a jury acting under the auspices of judges who had predetermined his guilt?

Would it have been an improvement of the plan, to have united the Supreme Court with the Senate, in the formation of the court of impeachments? This union would certainly have been attended with several advantages;

but would they not have been overbalanced by the signal disadvantage, already stated, arising from the agency of the same judges in the double prosecution to which the offender would be liable? To a certain extent, the benefits of that union will be obtained from making the chief justice of the Supreme Court the president of the court of impeachments, as is proposed to be done in the plan of the convention; while the inconveniences of an entire incorporation of the former into the latter will be substantially avoided. This was perhaps the prudent mean. I forbear to remark upon the additional pretext for clamor against the judiciary, which so considerable an augmentation of its authority would have afforded.

Would it have been desirable to have composed the court for the trial of impeachments, of persons wholly distinct from the other departments of the government? There are weighty arguments, as well against, as in favor of, such a plan. To some minds it will not appear a trivial objection, that it could tend to increase the complexity of the political machine, and to add a new spring to the government, the utility of which would at best be questionable. But an objection which will not be thought by any unworthy of attention, is this: a court formed upon such a plan, would either be attended with a heavy expense, or might in practice be subject to a variety of casualties and inconveniences. It must either consist of permanent officers, stationary at the seat of government, and of course entitled to fixed and regular stipends, or of certain officers of the State governments to be called upon whenever an impeachment was actually depending. It will not be easy to imagine any third mode materially different, which could rationally be proposed. As the court, for reasons already given, ought to be numerous, the first scheme will be reprobated by every man who can compare the extent of the public wants with the means of supplying them. The second will be espoused with caution by those who will seriously consider the difficulty of collecting men dispersed over the whole Union; the injury to the innocent, from the procrastinated determination of the charges

which might be brought against them; the advantage to the guilty, from the opportunities which delay would afford to intrigue and corruption; and in some cases the detriment to the State, from the prolonged inaction of men whose firm and faithful execution of their duty might have exposed them to the persecution of an intemperate or designing majority in the House of Representatives. Though this latter supposition may seem harsh, and might not be likely often to be verified, yet it ought not to be forgotten that the demon of faction will, at certain seasons, extend his sceptre over all numerous bodies of men.

But though one or the other of the substitutes which have been examined, or some other that might be devised, should be thought preferable to the plan in this respect, reported by the convention, it will not follow that the Constitution ought for this reason to be rejected. If mankind were to resolve to agree in no institution of government, until every part of it had been adjusted to the most exact standard of perfection, society would soon become a general scene of anarchy, and the world a desert. Where is the standard of perfection to be found? Who will undertake to unite the discordant opinions of a whole commuity, in the same judgment of it; and to prevail upon one conceited projector to renounce his INFALLIBLE criterion for the FALLIBLE criterion of his more CONCEITED NEIGHBOR? To answer the purpose of the adversaries of the Constitution, they ought to prove, not merely that particular provisions in it are not the best which might have been imagined, but that the plan upon the whole is bad and pernicious. PUBLIUS.

From the New York Packet, Tuesday, March 11, 1788.

THE FEDERALIST. No. LXVI.

(HAMILTON.)

To the People of the State of New York:

A REVIEW of the principal objections that have appeared against the proposed court for the trial of impeachments, will not improbably eradicate the remains of any unfavorable impressions which may still exist in regard to this matter.

The FIRST of these objections is, that the provision in question confounds legislative and judiciary authorities in the same body, in violation of that important and well-established maxim which requires a separation between the different departments of power. The true meaning of this maxim has been discussed and ascertained in another place, and has been shown to be entirely compatible with a partial intermixture of those departments for special purposes, preserving them, in the main, distinct and unconnected. This partial intermixture is even, in some cases, not only proper but necessary to the mutual defense of the several members of the government against each other. An absolute or qualified negative in the executive upon the acts of the legislative body, is admitted, by the ablest adepts in political science, to be an indispensable barrier against the encroachments of the latter upon the former. And it may, perhaps, with no less reason be contended, that the powers relating to impeachments are, as before intimated, an essential check in the hands of that body upon the encroachments of the executive. The division of them between the two branches of the legislature, assigning to one the right of accusing, to the other the right of judging, avoids the inconvenience of making the same persons both accusers and judges; and guards against

the danger of persecution, from the prevalency of a factious spirit in either of those branches. As the concurrence of two thirds of the Senate will be requisite to a condemnation, the security to innocence, from this additional circumstance, will be as complete as itself can desire.

It is curious to observe, with what vehemence this part of the plan is assailed, on the principle here taken notice of, by men who profess to admire, without exception, the constitution of this State; while that constitution makes the Senate, together with the chancellor and judges of the Supreme Court, not only a court of impeachments, but the highest judicatory in the State, in all causes, civil and criminal. The proportion, in point of numbers, of the chancellor and judges to the senators, is so inconsiderable, that the judiciary authority of New York, in the last resort, may, with truth, be said to reside in its Senate. If the plan of the convention be, in this respect, chargeable with a departure from the celebrated maxim which has been so often mentioned, and seems to be so little understood, how much more culpable must be the constitution of New York?*

A SECOND objection to the Senate, as a court of impeachments, is, that it contributes to an undue accumulation of power in that body, tending to give to the government a countenance too aristocratic. The Senate, it is observed, is to have concurrent authority with the Executive in the formation of treaties and in the appointment to offices: if, say the objectors, to these prerogatives is added that of deciding in all cases of impeachment, it will give a decided predominancy to senatorial influence. To an objection so little precise in itself, it is not easy to find a very precise answer. Where is the measure or criterion to which we can appeal, for determining what will give the Senate

* In that of New Jersey, also, the final judiciary authority is in a branch of the legislature. In New Hampshire, Massachusetts, Pennsylvania, and South Carolina, one branch of the legislature is the court for the trial of impeachments.

too much, too little, or barely the proper degree of influence? Will it not be more safe, as well as more simple, to dismiss such vague and uncertain calculations, to examine each power by itself, and to decide, on general principles, where it may be deposited with most advantage and least inconvenience?

If we take this course, it will lead to a more intelligible, if not to a more certain result. The disposition of the power of making treaties, which has obtained in the plan of the convention, will, then, if I mistake not, appear to be fully justified by the considerations stated in a former number, and by others which will occur under the next head of our inquiries. The expediency of the junction of the Senate with the Executive, in the power of appointing to offices, will, I trust, be placed in a light not less satisfactory, in the disquisitions under the same head. And I flatter myself the observations in my last paper must have gone no inconsiderable way towards proving that it was not easy, if practicable, to find a more fit receptacle for the power of determining impeachments, than that which has been chosen. If this be truly the case, the hypothetical dread of the too great weight of the Senate ought to be discarded from our reasonings.

But this hypothesis, such as it is, has already been refuted in the remarks applied to the duration in office prescribed for the senators. It was by them shown, as well on the credit of historical examples, as from the reason of the thing, that the most POPULAR branch of every government, partaking of the republican genius, by being generally the favorite of the people, will be as generally a full match, if not an overmatch, for every other member of the Government.

But independent of this most active and operative principle, to secure the equilibrium of the national House of Representatives, the plan of the convention has provided in its favor several important counterpoises to the additional authorities to be conferred upon the Senate. The exclusive privilege of originating money bills will belong to the House of Representatives. The same house will

possess the sole right of instituting impeachments: is not this a complete counterbalance to that of determining them? The same house will be the umpire in all elections of the President, which do not unite the suffrages of a majority of the whole number of electors; a case which it cannot be doubted will sometimes, if not frequently, happen. The constant possibility of the thing must be a fruitful source of influence to that body. The more it is contemplated, the more important will appear this ultimate though contingent power, of deciding the competitions of the most illustrious citizens of the Union, for the first office in it. It would not perhaps be rash to predict, that as a mean of influence it will be found to outweigh all the peculiar attributes of the Senate.

A THIRD objection to the Senate as a court of impeachments, is drawn from the agency they are to have in the appointments to office. It is imagined that they would be too indulgent judges of the conduct of men, in whose official creation they had participated. The principle of this objection would condemn a practice, which is to be seen in all the State governments, if not in all the governments with which we are acquainted: I mean that of rendering those who hold offices during pleasure, dependent on the pleasure of those who appoint them. With equal plausibility might it be alleged in this case, that the favoritism of the latter would always be an asylum for the misbehavior of the former. But that practice, in contradiction to this principle, proceeds upon the presumption, that the responsibility of those who appoint, for the fitness and competency of the persons on whom they bestow their choice, and the interest they will have in the respectable and prosperous administration of affairs, will inspire a sufficient disposition to dismiss from a share in it all such who, by their conduct, shall have proved themselves unworthy of the confidence reposed in them. Though facts may not always correspond with this presumption, yet if it be, in the main, just, it must destroy the supposition that the Senate, who will merely sanction the choice of the Executive, should feel a bias, towards the

objects of that choice, strong enough to blind them to the evidences of guilt so extraordinary, as to have induced the representatives of the nation to become its accusers.

If any further arguments were necessary to evince the improbability of such a bias, it might be found in the nature of the agency of the Senate in the business of appointments.

It will be the office of the President to NOMINATE, and, with the advice and consent of the Senate, to APPOINT. There will, of course, be no exertion of CHOICE on the part of the Senate. They may defeat one choice of the Executive, and oblige him to make another; but they cannot themselves CHOOSE — they can only ratify or reject the choice of the President. They might even entertain a preference to some other person, at the very moment they were assenting to the one proposed, because there might be no positive ground of opposition to him; and they could not be sure, if they withheld their assent, that the subsequent nomination would fall upon their own favorite, or upon any other person in their estimation more meritorious than the one rejected. Thus it could hardly happen, that the majority of the Senate would feel any other complacency towards the object of an appointment than such as the appearances of merit might inspire, and the proofs of the want of it destroy.

A FOURTH objection to the Senate in the capacity of a court of impeachments, is derived from its union with the Executive in the power of making treaties. This, it has been said, would constitute the senators their own judges, in every case of a corrupt or perfidious execution of that trust. After having combined with the Executive in betraying the interests of the nation in a ruinous treaty, what prospect, it is asked, would there be of their being made to suffer the punishment they would deserve, when they were themselves to decide upon the accusation brought against them for the treachery of which they have been guilty?

This objection has been circulated with more earnestness and with greater show of reason than any other

which has appeared against this part of the plan; and yet I am deceived if it does not rest upon an erroneous foundation.

The security essentially intended by the Constitution against corruption and treachery in the formation of treaties, is to be sought for in the numbers and characters of those who are to make them. The JOINT AGENCY of the Chief Magistrate of the Union, and of two thirds of the members of a body selected by the collective wisdom of the legislatures of the several States, is designed to be the pledge for the fidelity of the national councils in this particular. The convention might with propriety have meditated the punishment of the Executive, for a deviation from the instructions of the Senate, or a want of integrity in the conduct of the negotiations committed to him; they might also have had in view the punishment of a few leading individuals in the Senate, who should have prostituted their influence in that body as the mercenary instruments of foreign corruption: but they could not, with more or with equal propriety, have contemplated the impeachment and punishment of two thirds of the Senate, consenting to an improper treaty, than of a majority of that or of the other branch of the national legislature, consenting to a pernicious or unconstitutional law,—a principle which, I believe, has never been admitted into any government. How, in fact, could a majority in the House of Representatives impeach themselves? Not better, it is evident, than two thirds of the Senate might try themselves. And yet what reason is there, that a majority of the House of Representatives, sacrificing the interests of the society by an unjust and tyrannical act of legislation, should escape with impunity, more than two thirds of the Senate, sacrificing the same interests in an injurious treaty with a foreign power? The truth is, that in all such cases it is essential to the freedom and to the necessary independence of the deliberations of the body, that the members of it should be exempt from punishment for acts done in a collective capacity; and the security to the society must depend on

the care which is taken to confide the trust to proper hands, to make it their interest to execute it with fidelity, and to make it as difficult as possible for them to combine in any interest opposite to that of the public good.

So far as might concern the misbehavior of the Executive in perverting the instructions or contravening the views of the Senate, we need not be apprehensive of the want of a disposition in that body to punish the abuse of their confidence or to vindicate their own authority. We may thus far count upon their pride, if not upon their virtue. And so far even as might concern the corruption of leading members, by whose arts and influence the majority may have been inveigled into measures odious to the community, if the proofs of that corruption should be satisfactory, the usual propensity of human nature will warrant us in concluding that there would be commonly no defect of inclination in the body to divert the public resentment from themselves by a ready sacrifice of the authors of their mismanagement and disgrace.

PUBLIUS.

From the New York Packet, Tuesday, March 11, 1788.

THE FEDERALIST. No. LXVII.

(HAMILTON.)

To the People of the State of New York:

The constitution of the executive department of the proposed government, claims next our attention.

There is hardly any part of the system which could have been attended with greater difficulty in the arrangement of it than this; and there is, perhaps, none which has been inveighed against with less candor or criticised with less judgment.

Here the writers against the Constitution seem to have taken pains to signalize their talent of misrepresentation. Calculating upon the aversion of the people to monarchy, they have endeavored to enlist all their jealousies and apprehensions in opposition to the intended President of the United States; not merely as the embryo, but as the full-grown progeny, of that detested parent. To establish the pretended affinity, they have not scrupled to draw resources even from the regions of fiction. The authorities of a magistrate, in few instances greater, in some instances less, than those of a governor of New York, have been magnified into more than royal prerogatives. He has been decorated with attributes superior in dignity and splendor to those of a king of Great Britain. He has been shown to us with the diadem sparkling on his brow and the imperial purple flowing in his train. He has been seated on a throne surrounded with minions and mistresses, giving audience to the envoys of foreign potentates, in all the supercilious pomp of majesty. The images of Asiatic despotism and voluptuousness have scarcely been wanting to crown the exaggerated scene. We have been taught

to tremble at the terrific visages of murdering janizaries, and to blush at the unveiled mysteries of a future seraglio.

Attempts so extravagant as these to disfigure or, it might rather be said, to metamorphose the object, render it necessary to take an accurate view of its real nature and form: in order as well to ascertain its true aspect and genuine appearance, as to unmask the disingenuity and expose the fallacy of the counterfeit resemblances which have been so insidiously, as well as industriously, propagated.

In the execution of this task, there is no man who would not find it an arduous effort either to behold with moderation, or to treat with seriousness, the devices, not less weak than wicked, which have been contrived to pervert the public opinion in relation to the subject. They so far exceed the usual though unjustifiable licenses of party artifice, that even in a disposition the most candid and tolerant, they must force the sentiments which favor an indulgent construction of the conduct of political adversaries to give place to a voluntary and unreserved indignation. It is impossible not to bestow the imputation of deliberate imposture and deception upon the gross pretense of a similitude between a king of Great Britain and a magistrate of the character marked out for that of the President of the United States. It is still more impossible to withhold that imputation from the rash and barefaced expedients which have been employed to give success to the attempted imposition.

In one instance, which I cite as a sample of the general spirit, the temerity has proceeded so far as to ascribe to the President of the United States a power which by the instrument reported is EXPRESSLY allotted to the Executives of the individual States. I mean the power of filling casual vacancies in the Senate.

This bold experiment upon the discernment of his countrymen has been hazarded by a writer who (whatever may be his real merit) has had no inconsiderable share in the applauses of his party*; and who, upon this false

* See CATO, No. V.

and unfounded suggestion, has built a series of observations equally false and unfounded. Let him now be confronted with the evidence of the fact, and let him, if he be able, justify or extenuate the shameful outrage he has offered to the dictates of truth and to the rules of fair dealing.

The second clause of the second section of the second article empowers the President of the United States "to nominate, and by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other OFFICERS of United States whose appointments are NOT in the Constitution OTHERWISE PROVIDED FOR, and WHICH SHALL BE ESTABLISHED BY LAW." Immediately after this clause follows another in these words: "The President shall have power to fill up all VACANCIES that may happen DURING THE RECESS OF THE SENATE, by granting commissions which shall EXPIRE AT THE END OF THEIR NEXT SESSION." It is from this last provision that the pretended power of the President to fill vacancies in the Senate has been deduced. A slight attention to the connection of the clauses, and to the obvious meaning of the terms, will satisfy us that the deduction is not even colorable.

The first of these two clauses, it is clear, only provides a mode for appointing such officers, "whose appointments are NOT OTHERWISE PROVIDED FOR in the Constitution, and which SHALL BE ESTABLISHED BY LAW"; of course it cannot extend to the appointments of senators, whose appointments are OTHERWISE PROVIDED FOR in the Constitution*, and who are ESTABLISHED BY THE CONSTITUTION, and will not require a future establishment by law. This position will hardly be contested.

The last of these two clauses, it is equally clear, cannot be understood to comprehend the power of filling vacancies in the Senate, for the following reasons:—*First.* The relation in which that clause stands to the other, which declares the general mode of appointing officers of the United States, denotes it to be nothing more than a

*Article 1, section 3, clause 1.

supplement to the other, for the purpose of establishing an auxiliary method of appointment, in cases to which the general method was inadequate. The ordinary power of appointment is confined to the President and Senate JOINTLY, and can therefore only be exercised during the session of the Senate; but as it would have been improper to oblige this body to be continually in session for the appointment of officers and as vacancies might happen IN THEIR RECESS, which it might be necessary for the public service to fill without delay, the succeeding clause is evidently intended to authorize the President, SINGLY, to make temporary appointments "during the recess of the Senate, by granting commissions which shall expire at the end of their next session." *Secondly.* If this clause is to be considered as supplementary to the one which precedes, the VACANCIES of which it speaks must be construed to relate to the "officers" described in the preceding one; and this, we have seen, excludes from its description the members of the Senate. *Thirdly.* The time within which the power is to operate, "during the recess of the Senate," and the duration of the appointments, "to the end of the next session" of that body, conspire to elucidate the sense of the provision, which, if it had been intended to comprehend senators, would naturally have referred the temporary power of filling vacancies to the recess of the State legislatures, who are to make the permanent appointments, and not to the recess of the national Senate, who are to have no concern in those appointments; and would have extended the duration in office of the temporary senators to the next session of the legislature of the State, in whose representation the vacancies had happened, instead of making it to expire at the end of the ensuing session of the national Senate. The circumstances of the body authorized to make the permanent appointments would, of course, have governed the modification of a power which related to the temporary appointments; and as the national Senate is the body, whose situation is alone contemplated in the clause upon which the suggestion under examination has been founded, the

vacancies to which it alludes can only be deemed to respect those officers in whose appointment that body has a concurrent agency with the President. But *lastly*, the first and second clauses of the third section of the first article, not only obviate all possibility of doubt, but destroy the pretext of misconception. The former provides, that "the Senate of the United States shall be composed of two Senators from each State, chosen BY THE LEGISLATURE THEREOF for six years"; and the latter directs, that, "if vacancies in that body should happen by resignation or otherwise, DURING THE RECESS OF THE LEGISLATURE OF ANY STATE, the Executive THEREOF may make temporary appointments until the NEXT MEETING OF THE LEGISLATURE, which shall then fill such vacancies." Here is an express power given, in clear and unambiguous terms, to the State Executives, to fill casual vacancies in the Senate, by temporary appointments; which not only invalidates the supposition, that the clause before considered could have been intended to confer that power upon the President of the United States, but proves that this supposition, destitute as it is even of the merit of plausibility, must have originated in an intention to deceive the people, too palpable to be obscured by sophistry, too atrocious to be palliated by hypocrisy.

I have taken the pains to select this instance of misrepresentation, and to place it in a clear and strong light, as an unequivocal proof of the unwarrantable arts which are practiced to prevent a fair and impartial judgment of the real merits of the Constitution submitted to the consideration of the people. Nor have I scrupled, in so flagrant a case, to allow myself a severity of animadversion little congenial with the general spirit of these papers. I hesitate not to submit it to the decision of any candid and honest adversary of the proposed government, whether language can furnish epithets of too much asperity, for so shameless and so prostitute an attempt to impose on the citizens of America. PUBLIUS.

From the New York Packet, Friday, March 14, 1788.

THE FEDERALIST. No. LXVIII.

(HAMILTON.)

To the People of the State of New York:

The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit that the election of the President is pretty well guarded.* I venture somewhat further, and hesitate not to affirm, that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages, the union of which was to be wished for.

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.

* *Vide* Federal Farmer.

It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the government as the President of the United States. But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief. The choice of SEVERAL, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements, than the choice of ONE who was himself to be the final object of the public wishes. And as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which might be communicated from them to the people, than if they were all to be convened at one time, in one place.

Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one querter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union? But the convention have guarded against all danger of this sort, with the most provident and judicious attention. They have not made the appointment of the President to depend on any pre-existing bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust, all those who from situation might be suspected of too great devotion to the President in office. No senator, representative, or other person holding a

place of trust or profit under the United States, can be of the numbers of the electors. Thus without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free from any sinister bias. Their transient existence, and their detached situation, already taken notice of, afford a satisfactory prospect of their continuing so, to the conclusion of it. The business of corruption, when it is to embrace so considerable a number of men, requires time as well as means. Nor would it be found easy suddenly to embark them, dispersed as they would be over thirteen States, in any combinations founded upon motives, which though they could not properly be denominated corrupt, might yet be of a nature to mislead them from their duty.

Another and no less important desideratum was, that the Executive should be independent for his continuance in office on all but the people themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to the duration of his official consequence. This advantage will also be secured, by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice.

All these advantages will happily combine in the plan devised by the convention; which is, that the people of each State shall choose a number of persons as electors, equal to the number of senators and representatives of such State in the national government, who shall assemble within the State, and vote for some fit person as President. Their votes, thus given, are to be transmitted to the seat of the national government, and the person who may happen to have a majority of the whole number of votes will be the President. But as a majority of the votes might not always happen to centre in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided that, in such a contingency, the House of Representatives shall select out of the candidates who shall have the five highest

number of votes, the man who in their opinion may be best qualified for the office.

The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue. And this will be thought no inconsiderable recommendation of the Constitution, by those who are able to estimate the share which the executive in every government must necessarily have in its good or ill administration. Though we cannot acquiesce in the political heresy of the poet who says:

> «For forms of government let fools contest—
> That which is best administered is best,»—

yet we may safely pronounce, that the true test of a good government is its aptitude and tendency to produce a good administration.

The Vice-President is to be chosen in the same manner with the President; with this difference, that the Senate is to do, in respect to the former, what is to be done by the House of Representatives, in respect to the latter.

The appointment of an extraordinary person, as Vice-President, has been objected to as superfluous, if not mischievous. It has been alleged, that it would have been preferable to have authorized the Senate to elect out of their own body an officer answering that description. But two considerations seem to justify the ideas of the convention in this respect. One is, that to secure at

all times the possibility of a definite resolution of the body, it is necessary that the President should have only a casting vote. And to take the senator of any State from his seat as senator, to place him in that of President of the Senate, would be to exchange, in regard to the State from which he came, a constant for a contingent vote. The other consideration is, that as the Vice-President may occasionally become a substitute for the President, in the supreme executive magistracy, all the reasons which recommend the mode of election prescribed for the one, apply with great if not with equal force to the manner of appointing the other. It is remarkable that in this, as in most other instances, the objection which is made would lie against the constitution of this State. We have a Lieutenant-Governor, chosen by the people at large, who presides in the Senate, and is the constitutional substitute for the Governor, in casualties similar to those which would authorize the Vice-President to exercise the authorities and discharge the duties of the President. PUBLIUS.

From the New York Packet, Friday, March 14, 1788.

THE FEDERALIST. No. LXIX.

(HAMILTON)

To the People of the State of New York:

I PROCEED now to trace the real characters of the proposed Executive, as they are marked out in the plan of the convention. This will serve to place in a strong light the unfairness of the representations which have been made in regard to it.

The first thing which strikes our attention is, that the executive authority, with few exceptions, is to be vested in a single magistrate. This will scarcely, however, be considered as a point upon which any comparison can be grounded; for if, in this particular, there be a resemblance to the king of Great Britain, there is not less a resemblance to the Grand Seignior, to the khan of Tartary, to the Man of the Seven Mountains, or to the governor of New York.

That magistrate is to be elected for FOUR years; and is to be re-eligible as often as the people of the United States shall think him worthy of their confidence. In these circumstances there is a total dissimilitude between HIM and a king of Great Britain, who is an HEREDITARY monarch, possessing the crown as a patrimony descendible to his heirs forever; but there is a close analogy between HIM and a governor of New York, who is elected for THREE years, and is re-eligible without limitation or intermission. If we consider how much less time would be requisite for establishing a dangerous influence in a single State, than for establishing a like influence throughout the United States, we must conclude that a duration of FOUR years for the Chief Magistrate of the Union is a degree of per-

manency far less to be dreaded in that office, than a duration of THREE years for a corresponding office in a single State.

The President of the United States would be liable to be impeached, tried, and, upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law. The person of the king of Great Britain is sacred and inviolable; there is no constitutional tribunal to which he is amenable; no punishment to which he can be subjected without involving the crisis of a national revolution. In this delicate and important circumstance of personal responsibility, the President of Confederated America would stand upon no better ground than a governor of New York, and upon worse ground than the governors of Maryland and Delaware.

The President of the United States is to have power to return a bill, which shall have passed the two branches of the legislature, for reconsideration; and the bill so returned is to become a law, if, upon that reconsideration, it be approved by two thirds of both houses. The king of Great Britain, on his part, has an absolute negative upon the acts of the two houses of Parliament. The disuse of that power for a considerable time past does not affect the reality of its existence; and is to be ascribed wholly to the crown's having found the means of substituting influence to authority, or the art of gaining a majority in one or the other of the two houses, to the necessity of exerting a prerogative which could seldom be exerted without hazarding some degree of national agitation. The qualified negative of the President differs widely from this absolute negative of the British sovereign; and tallies exactly with the revisionary authority of the council of revision of this State, of which the governor is a constituent part. In this respect the power of the President would exceed that of the governor of New York, because the former would possess, singly, what the latter shares with the chancellor and judges; but it would be precisely the same with that of the governor of Massachusetts, whose constitution, as

to this article, seems to have been the original from which the convention have copied.

The President is to be the "commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He is to have power to grant reprieves and pardons for offenses against the United States, EXCEPT IN CASES OF IMPEACHMENT; to recommend to the consideration of Congress such measures as he shall judge necessary and expedient; to convene, on extraordinary occasions, both houses of the legislature, or either of them, and, in case of disagreement between them WITH RESPECT TO THE TIME OF ADJOURNMENT, to adjourn them to such time as he shall think proper; to take care that the laws be faithfully executed; and to commission all officers of the United States." In most of these particulars, the power of the President will resemble equally that of the king of Great Britain and of the governor of New York. The most material points of difference are these:—*First.* The President will have only the occasional command of such part of the militia of the nation as by legislative provision may be called into the actual service of the Union. The king of Great Britain and the governor of New York have at all times the entire command of all the militia within their several jurisdictions. In this article, therefore, the power of the President would be inferior to that of either the monarch or the governor. *Secondly.* The President is to be commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy; while that of the British king extends to the DECLARING of war and to the RAISING and REGULATING of fleets and armies,—all which, by the Constitution under consideration, would appertain to the legislature.* The governor of

* A writer in a Pennsylvania paper, under the signature of TAMONY,

New York, on the other hand, is by the constitution of the State vested only with the command of its militia and navy. But the constitutions of several of the States expressly declare their governors to be commanders-in-chief, as well of the army as navy; and it may well be a question, whether those of New Hampshire and Massachusetts, in particular, do not, in this instance, confer larger powers upon their respective governors, than could be claimed by a President of the United States. *Thirdly.* The power of the President, in respect to pardons, would extend to all cases, EXCEPT THOSE OF IMPEACHMENT. The governor of New York may pardon in all cases, even in those of impeachment, except for treason and murder. Is not the power of the governor, in this article, on a calculation of political consequences, greater than that of the President? All conspiracies and plots against the government, which have not been matured into actual treason, may be screened from punishment of every kind, by the interposition of the prerogative of pardoning. If a governor of New York, therefore, should be at the head of any such conspiracy, until the design had been ripened into actual hostility he could insure his accomplices and adherents an entire impunity. A President of the Union, on the other hand, though he may even pardon treason, when prosecuted in the ordinary course of law, could shelter no offender, in any degree, from the effects of impeachment and conviction. Would not the prospect of a total indem-

has asserted that the king of Great Britain owes his prerogative as commander-in-chief to an annual mutiny bill. The truth is, on the contrary, that his prerogative, in this respect, is immemorial, and was only disputed, «contrary to all reason and precedent,» as Blackstone, vol. i., page 262, expresses it, by the Long Parliament of Charles I. but by the statute the 13th of Charles II., chap. 6, it was declared to be in the king alone, for that the sole supreme government and command of the militia within his Majesty's realms and dominions, and of all forces by sea and land, and of all forts and places of strength, EVER WAS AND IS the undoubted right of his Majesty and his royal predecessors, kings and queens of England, and that both or either house of Parliament cannot nor ought to pretend to the same.

nity for all the preliminary steps be a greater temptation to undertake and persevere in an enterprise against the public liberty, than the mere prospect of an exemption from death and confiscation, if the final execution of the design, upon an actual appeal to arms, should miscarry? Would this last expectation have any influence at all, when the probability was computed, that the person who was to afford that exemption might himself be involved in the consequences of the measure, and might be incapacitated by his agency in it from affording the desired impunity? The better to judge of this matter, it will be necessary to recollect, that, by the proposed Constitution, the offense of treason is limited "to levying war upon the United States, and adhering to their enemies, giving them aid and comfort"; and that by the laws of New York it is confined within similar bounds. Fourthly. The President can only adjourn the national legislature in the single case of disagreement about the time of adjournment. The British monarch may prorogue or even dissolve the Parliament. The governor of New York may also prorogue the legislature of this State for a limited time; a power which, in certain situations, may be employed to very important purposes.

The President is to have power, with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur. The king of Great Britain is the sole and absolute representative of the nation in all foreign transactions. He can of his own accord make treaties of peace, commerce, alliance, and of every other description. It has been insinuated, that his authority in this respect is not conclusive, and that his conventions with foreign powers are subject to the revision, and stand in need of the ratification, of Parliament. But I believe this doctrine was never heard of, until it was broached upon the present occasion. Every jurist* of that kingdom, and every other man acquainted with its Constitution, knows, as an established fact, that the prerogative of making treaties exists in the crown in its utmost plentitude; and

**Vide* Blackstone's "Commentaries," vol i., p. 257.

that the compacts entered into by the royal authority have the most complete legal validity and perfection, independent of any other sanction. The Parliament, it is true, is sometimes seen employing itself in altering the existing laws to conform them to the stipulations in a new treaty: and this may have possibly given birth to the imagination, that its co-operation was necessary to the obligatory efficacy of the treaty. But this parliamentary interposition proceeds from a different cause: from the necessity of adjusting a most artificial and intricate system of revenue and commercial laws, to the changes made in them by the operation of the treaty; and of adapting new provisions and precautions to the new state of things, to keep the machine from running into disorder. In this respect, therefore, there is no comparison between the intended power of the President and the actual power of the British sovereign. The one can perform alone what the other can do only with the concurrence of a branch of the legislature. It must be admitted, that, in this instance, the power of the federal Executive would exceed that of any State Executive. But this arises naturally from the sovereign power which relates to treaties. If the Confederacy were to be dissolved, it would become a question, whether the Executives of the several States were not solely invested with that delicate and important prerogative.

The President is also to be authorized to receive ambassadors and other public ministers. This, though it has been a rich theme of declamation, is more a matter of dignity than of authority. It is a circumstance which will be without consequence in the administration of the government; and it was far more convenient that it should be arranged in this manner, than that there should be a necessity of convening the legislature, or one of its branches, upon every arrival of a foreign minister, though it were merely to take the place of a departed predecessor.

The President is to nominate, and, WITH THE ADVICE AND CONSENT OF THE SENATE, to appoint ambassadors and other public ministers, judges of the Supreme Court, and in general all officers of the United States established by law, and

whose appointments are not otherwise provided for by the Constitution. The king of Great Britain is emphatically and truly styled the fountain of honor. He not only appoints to all offices, but can create offices. He can confer titles of nobility at pleasure; and has the disposal of an immense number of church preferments. There is evidently a great inferiority in the power of the President, in this particular, to that of the British king; nor is it equal to that of the governor of New York, if we are to interpret the meaning of the constitution of the State by the practice which has obtained under it. The power of appointment is with us lodged in a council, composed of the governor and four members of the Senate, chosen by the Assembly. The governor CLAIMS, and has frequently EXERCISED, the right of nomination, and is ENTITLED to a casting vote in the appointment. If he really has the right of nominating, his authority is in this respect equal to that of the President, and exceeds it in the article of the casting vote. In the national government, if the Senate should be divided, no appointment could be made; in the government of New York, if the council should be divided, the governor can turn the scale, and confirm his own nomination.* If we compare the publicity which must necessarily attend the mode of appointment by the President and an entire branch of the national legislature, with the privacy in the mode of appointment by the governor of New York, closeted in a secret apartment with at most four, and frequently with only two persons; and if we at the same time consider how much more easy it must be to influence the small number of which a council of appointment consists, than the considerable number of which the national Senate would consist, we cannot hesitate to pronounce that the power of

*Candor, however, demands an acknowledgment that I do not think the claim of the governor to a right of nomination well founded. Yet it is always justifiable to reason from the practice of a government, till its propriety has been constitutionally questioned. And independent of this claim, when we take into view the other considerations, and pursue them through all their consequences, we shall be inclined to draw much the same conclusion.

the chief magistrate of this State, in the disposition of offices, must, in practice, be greatly superior to that of the Chief Magistrate of the Union.

Hence it appears that, except as to the concurrent authority of the President in the article of treaties, it would be difficult to determine whether that magistrate would, in the aggregate, possess more or less power than the Governor of New York. And it appears yet more unequivocally, that there is no pretense for the parallel which has been attempted between him and the king of Great Britain. But to render the contrast in this respect still more striking, it may be of use to throw the principal circumstances of dissimilitude into a closer group.

The President of the United States would be an officer elected by the people for FOUR years; the king of Great Britain is a perpetual and HEREDITARY prince. The one would be amenable to personal punishment and disgrace; the person of the other is sacred and inviolable. The one would have a QUALIFIED negative upon the acts of the legislative body; the other has an ABSOLUTE negative. The one would have a right to command the military and naval forces of the nation; the other, in addition to this right, possesses that of DECLARING war, and of RAISING and REGULATING fleets and armies by his own authority. The one would have a concurrent power with a branch of the legislature in the formation of treaties; the other is the SOLE POSSESSOR of the power of making treaties. The one would have a like concurrent authority in appointing to offices; the other is the sole author of all appointments. The one can confer no privileges whatever; the other can make denizens of aliens, noblemen of commoners; can erect corporations with all the rights incident to corporate bodies. The one can prescribe no rules concerning the commerce or currency of the nation; the other is in several respects the arbiter of commerce, and in this capacity can establish markets and fairs, can regulate weights and measures, can lay embargoes for a limited time, can coin money, can

authorize or prohibit the circulation of foreign coin. The one has no particle of spiritual jurisdiction; the other is the supreme head and governor of the national church! What answer shall we give to those who would persuade us that things so unlike resemble each other? The same that ought to be given to those who tell us that a government, the whole power of which would be in the hands of the elective and periodical servants of the people, is an aristocracy, a monarchy, and a despotism. PUBLIUS.

From the New York Packet, Tuesday, March 18, 1788.

THE FEDERALIST. No. LXX.

(HAMILTON.)

To the People of the State of New York:

THERE is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.

There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a govern-

ment ill executed, whatever it may be in theory, must be, in practice, a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers.

The ingredients which constitute safety in the republican sense are, first, a due dependence on the people, secondly, a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views, have declared in favor of a single Executive and a numerous legislature. They have with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand, while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and despatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.

This unity may be destroyed in two ways: either by vesting the power in two or more magistrates of equal dignity and authority; or by vesting it ostensibly in one man, subject, in whole or in part, to the control and co-operation of others, in the capacity of counsellors to

him. Of the first, the two Consuls of Rome may serve as an example; of the last, we shall find examples in the constitutions of several of the States. New York and New Jersey, if I recollect right, are the only States which have intrusted the executive authority wholly to single men.* Both these methods of destroying the unity of the Executive have their partisans; but the votaries of an executive council are the most numerous. They are both liable, if not to equal, to similar objections, and may in most lights be examined in conjunction.

The experience of other nations will afford little instruction on this head. As far, however, as it teaches any thing, it teaches us not to be enamoured of plurality in the Executive. We have seen that the Achæans, on an experiment of two Prætors, were induced to abolish one. The Roman history records many instances of mischiefs to the republic from the dissensions between the Consuls, and between the military Tribunes, who were at times substituted for the Consuls. But it gives us no specimens of any peculiar advantages derived to the state from the circumstance of the plurality of those magistrates. That the dissensions between them were not more frequent or more fatal, is a matter of astonishment, until we advert to the singular position in which the republic was almost continually placed, and to the prudent policy pointed out by the circumstances of the state, and pursued by the Consuls, of making a division of the government between them. The patricians engaged in a perpetual struggle with the plebeians for the preservation of their ancient authorities and dignities; the Consuls, who were generally chosen out of the former body, were commonly united by the personal interest they had in the defense of the privileges of their order. In addition to this motive of union, after the arms of the republic had considerably expanded the bounds of its empire, it

* New York has no council except for the single purpose of appointing to offices; New Jersey has a council whom the governor may consult. But I think, from the terms of the constitution, their resolutions do not bind him.

became an established custom with the Consuls to divide the administration between themselves by lot—one of them remaining at Rome to govern the city and its environs, the other taking the command in the more distant provinces. This expedient must, no doubt, have had great influence in preventing those collisions and rivalships which might otherwise have embroiled the peace of the republic.

But quitting the dim light of historical research, attaching ourselves purely to the dictates of reason and good sense, we shall discover much greater cause to reject than to approve the idea of plurality in the Executive, under any modification whatever.

Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office, in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity. From either, and especially from all these causes, the most bitter dissensions are apt to spring. Whenever these happen, they lessen the respectability, weaken the authority, and distract the plans and operation of those whom they divide. If they should unfortunately assail the supreme executive magistracy of a country, consisting of a plurality of persons, they might impede or frustrate the most important measures of the government, in the most critical emergencies of the state. And what is still worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy.

Men often oppose a thing, merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been

resolved upon contrary to their sentiments. Men of upright, benevolent tempers have too many opportunities of remarking, with horror, to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable frailty, or rather detestable vice, in the human character.

Upon the principles of a free government, inconveniences from the source just mentioned must necessarily be submitted to in the formation of the legislature; but it is unnecessary, and therefore unwise, to introduce them into the constitution of the Executive. It is here too that they may be most pernicious. In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarrings of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here, they are pure and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the Executive which are the most necessary ingredients in its composition,—vigor and expedition, and this without any counterbalancing good. In the conduct of war, in which the energy of the Executive is the bulwark of the national security, every thing would be to be apprehended from its plurality.

It must be confessed that these observations apply with principal weight to the first case supposed — that is, to a plurality of magistrates of equal dignity and authority a scheme, the advocates for which are not likely to form a numerous sect; but they apply, though not with equal, yet with considerable weight to the project of a council, whose concurrence is made constitutionally necessary to the operations of the ostensible Executive. An artful cabal in that council would be able to distract and to enervate the whole system of administration. If no such cabal should exist, the mere diversity of views and opinions would alone be sufficient to tincture the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness.

But one of the weightiest objections to a plurality in the Executive, and which lies as much against the last as the first plan, is, that it tends to conceal faults and destroy responsibility. Responsibility is of two kinds — to censure and to punishment. The first is the more important of the two, especially in an elective office. Man, in public trust, will much oftener act in such a manner as to render him unworthy of being any longer trusted, than in such a manner as to make him obnoxious to legal punishment. But the multiplication of the Executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that, where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable.

"I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point." These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble or incur the odium, of a strict scrunity into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happen to be collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity, as to render it uncertain what was the precise conduct of any of those parties?

In the single instance in which the governor of this State is coupled with a council — that is, in the appointment to offices, we have seen the mischiefs of it in the view now under consideration. Scandalous appointments to important offices have been made. Some cases, indeed, have been so flagrant that ALL PARTIES have agreed in the impropriety of the thing. When inquiry has been made, the blame has been laid by the governor on the members of the council, who, on their part, have charged it upon his nomination; while the people remain altogether at a loss to determine, by whose influence their interests have been committed to hands so unqualified and so manifestly improper. In tenderness to individuals, I forbear to descend to particulars.

It is evident from these considerations, that the plurality of the Executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power, *first*, the restraints of public opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number, as on account of the uncertainty on whom it ought to fall; and, *secondly*, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which admit of it.

In England, the king is a perpetual magistrate; and it

is a maxim which has obtained for the sake of the public peace, that he is unaccountable for his administration, and his person sacred. Nothing, therefore, can be wiser in that kingdom, than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without this, there would be no responsibility whatever in the executive department — an idea inadmissible in a free government. But even there the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct in the exercise of his office, and may observe or disregard the counsel given to him at his sole discretion.

But in a republic, where every magistrate ought to be personally responsible for his behavior in office the reason which in the British Constitution dictates the propriety of a council, not only ceases to apply, but turns against the institution. In the monarchy of Great Britain, it furnishes a substitute for the prohibited responsibility of the chief magistrate, which serves in some degree as a hostage to the national justice for his good behavior. In the American republic, it would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the Chief Magistrate himself.

The idea of a council to the Executive, which has so generally obtained in the State constitutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man. If the maxim should be admitted to be applicable to the case, I should contend that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power. I clearly concur in opinion, in this particular, with a writer whom the celebrated Junius pronounces to be "deep, solid, and ingenious," that "the executive power is more easily confined when it is ONE";* that it is far more safe there should be a single object for the jealousy and watchfulness of the

*De Lolme.

people; and, in a word, that all multiplication of the Executive is rather dangerous than friendly to liberty.

A little consideration will satisfy us, that the species of security sought for in the multiplication of the Executive, is unattainable. Numbers must be so great as to render combination difficult, or they are rather a source of danger than of security. The united credit and influence of several individuals must be more formidable to liberty, than the credit and influence of either of them separately. When power, therefore, is placed in the hands of so small a number of men, as to admit of their interests and views being easily combined in a common enterprise, by an artful leader, it becomes more liable to abuse, and more dangerous when abused, than if it be lodged in the hands of one man; who, from the very circumstance of his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others. The Decemvirs of Rome, whose name denotes their number,* were more to be dreaded in their usurpation than any ONE of them would have been. No person would think of proposing an Executive much more numerous than that body; from six to a dozen have been suggested for the number of the council. The extreme of these numbers, is not too great for an easy combination; and from such a combination America would have more to fear, than from the ambition of any single individual. A council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions, are often the instruments and accomplices of his bad and are almost always a cloak to his faults.

I forbear to dwell upon the subject of expense; though it be evident that if the council should be numerous enough to answer the principal end aimed at by the institution, the salaries of the members, who must be drawn from their homes to reside at the seat of government, would form an item in the catalogue of public

*Ten.

expenditures too serious to be incurred for an object of equivocal utility. I will only add that, prior to the appearance of the Constitution, I rarely met with an intelligent man from any of the States, who did not admit, as the result of experience, that the UNITY of the executive of this State was one of the best of the distinguishing features of our constitution. PUBLIUS.

From the New York Packet, Tuesday, March 18, 1788.

THE FEDERALIST. No. LXXI.

(HAMILTON.)

To the People of the State of New York:

Duration in office has been mentioned as the second requisite to the energy of the Executive authority. This has relation to two objects: to the personal firmness of the executive magistrate, in the employment of his constitutional powers; and to the stability of the system of administration which may have been adopted under his auspices. With regard to the first, it must be evident, that the longer the duration in office, the greater will be the probability of obtaining so important an advantage. It is a general principle of human nature, that a man will be interested in whatever he possesses, in proportion to the firmness or precariousness of the tenure by which he holds it; will be less attached to what he holds by a momentary or uncertain title, than to what he enjoys by a durable or certain title; and, of course, will be willing to risk more for the sake of the one, than for the sake of the other. This remark is not less applicable to a political privilege, or honor, or trust, than to any article of ordinary property. The inference from it is, that a man acting in the capacity of chief magistrate, under a consciousness that in a very short time he must lay down his office, will be apt to feel himself too little interested in it to hazard any material censure or perplexity, from the independent exertion of his powers, or from encountering the ill-humors, however transient, which may happen to prevail, either in a considerable part of the society itself, or even in a predominant faction in the legislative body. If the case should only be, that he might lay it down, unless continued by a new choice, and if he should be desirous of being continued, his wishes,

conspiring with his fears, would tend still more powerfully to corrupt his integrity, or debase his fortitude. In either case, feebleness and irresolution must be the characteristics of the station.

There are some who would be inclined to regard the servile pliancy of the Executive to a prevailing current, either in the community or in the legislature, as its best recommendation. But such men entertain very crude notions, as well of the purposes for which government was instituted, as of the true means by which the public happiness may be promoted. The republican principle demands that the deliberate sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests. It is a just observation, that the people commonly INTEND the PUBLIC GOOD. This often applies to their very errors. But their good sense would despise the adulator who should pretend that they always REASON RIGHT about the MEANS of promoting it. They know from experience that they sometimes err; and the wonder is that they so seldom err as they do, beset, as they continually are, by the wiles of parasites and sycophants, by the snares of the ambitious, the avaricious, the desperate, by the artifices of men who possess their confidence more than they deserve it, and of those who seek to possess rather than to deserve it. When occasions present themselves, in which the interests of the people are at variance with their inclinations, it is the duty of the persons whom they have appointed to be the guardians of those interests, to withstand the temporary delusion, in order to give them time and opportunity for more cool and sedate reflection. Instances might be cited in which a conduct of this kind has saved the people from very fatal consequences of their own mistakes, and has procured lasting monuments of their gratitude to the men who had courage and

magnanimity enough to serve them at the peril of their displeasure.

But however inclined we might be to insist upon an unbounded complaisance in the Executive to the inclinations of the people, we can with no propriety contend for a like complaisance to the humors of the legislature. The latter may sometimes stand in opposition to the former, and at other times the people may be entirely neutral. In either supposition, it is certainly desirable that the Executive should be in a situation to dare to act his own opinion with vigor and decision.

The same rule which teaches the propriety of a partition between the various branches of power, teaches us likewise that this partition ought to be so contrived as to render the one independent of the other. To what purpose separate the executive or the judiciary from the legislative, if both the executive and the judiciary are so constituted as to be at the absolute devotion of the legislative? Such a separation must be merely nominal, and incapable of producing the ends for which it was established. It is one thing to be subordinate to the laws, and another to be dependent on the legislative body. The first comports with, the last violates, the fundamental principles of good government; and, whatever may be the forms of the Constitution, unites all power in the same hands. The tendency of the legislative authority to absorb every other, has been fully displayed and illustrated by examples in some preceding numbers. In governments purely republican, this tendency is almost irresistible. The representatives of the people, in a popular assembly, seem sometimes to fancy that they are the people themselves, and betray strong symptoms of impatience and disgust at the least sign of opposition from any other quarter; as if the exercise of its rights, by either the executive or judiciary, were a breach of their privilege and an outrage to their dignity. They often appear disposed to exert an imperious control over the other departments; and as they commonly have the people on their side, they always act with

such momentum as to make it very difficult for the other members of the government to maintain the balance of the Constitution.

It may perhaps be asked, how the shortness of the duration in office can affect the independence of the Executive on the legislature, unless the one were possessed of the power of appointing or displacing the other. One answer to this inquiry may be drawn from the principle already remarked — that is, from the slender interest a man is apt to take in a short-lived advantage, and the little inducement it affords him to expose himself, on account of it, to any considerable inconvenience or hazard. Another answer, perhaps more obvious, though not more conclusive, will result from the consideration of the influence of the legislative body over the people; which might be employed to prevent the re-election of a man who, by an upright resistance to any sinister project of that body, should have made himself obnoxious to its resentment.

It may be asked also, whether a duration of four years would answer the end proposed; and if it would not, whether a less period, which would at least be recommended by greater security against ambitious designs, would not, for that reason, be preferable to a longer period, which was, at the same time, too short for the purpose of inspiring the desired firmness and independence of the magistrate.

It cannot be affirmed, that a duration of four years, or any other limited duration, would completely answer the end proposed; but it would contribute towards it in a degree which would have a material influence upon the spirit and character of the government. Between the commencement and termination of such a period, there would always be a considerable interval, in which the prospect of annihilation would be sufficiently remote, not to have an improper effect upon the conduct of a man indued with a tolerable portion of fortitude; and in which he might reasonably promise himself, that there would be time enough before it arrived, to make the community sensible of the propriety of the measures he might incline to

pursue. Though it be probable that, as he approached the moment when the public were, by a new election, to signify their sense of his conduct, his confidence, and with it his firmness, would decline; yet both the one and the other would derive support from the opportunities which his previous continuance in the station had afforded him, of establishing himself in the esteem and good-will of his constituents. He might, then, hazard with safety, in proportion to the proofs he had given of his wisdom and integrity, and to the title he had acquired to the respect and attachment of his fellow-citizens. As, on the one hand, a duration of four years will contribute to the firmness of the Executive in a sufficient degree to render it a very valuable ingredient in the composition; so, on the other, it is not enough to justify any alarm for the public liberty. If a British House of Commons, from the most feeble beginnings, FROM THE MERE POWER OF ASSENTING OR DISAGREEING TO THE IMPOSITION OF A NEW TAX, have, by rapid strides, reduced the prerogatives of the crown and the privileges of the nobility within the limits they conceived to be compatible with the principles of a free government, while they raised themselves to the rank and consequence of a coequal branch of the legislature; if they have been able, in one instance, to abolish both the royalty and the aristocracy, and to overturn all the ancient establishments, as well in the Church as State; if they have been able, on a recent occasion, to make the monarch tremble at the prospect of an innovation* attempted by them, what would be to be feared from an elective magistrate of four years' duration, with the confined authorities of a President of the United States? What, but that he might be unequal to the task which the Constitution assigns him? I shall only add, that if his duration be such as to leave a doubt of his firmness, that doubt is inconsistent with a jealousy of his encroachments. PUBLIUS.

*This was the case with respect to Mr. Fox's India bill, which was carried in the House of Commons, and rejected in the House of Lords, to the entire satisfaction, as it is said, of the people.

From the New York Packet, Friday, March 21, 1788.

THE FEDERALIST. No. LXXII.

(HAMILTON.)

To the People of the State of New York:

The administration of government, in its largest sense, comprehends all the operations of the body politic, whether legislative, executive, or judiciary; but in its most usual, and perhaps its most precise signification, it is limited to executive details, and falls peculiarly within the province of the executive department. The actual conduct of foreign negotiations, the preparatory plans of finance, the application and disbursement of the public moneys in conformity to the general appropriations of the legislature, the arrangement of the army and navy, the directions of the operations of war,—these, and other matters of a like nature, constitute what seems to be most properly understood by the administration of government. The persons, therefore, to whose immediate management these different matters are committed, ought to be considered as the assistants or deputies of the chief magistrate, and on this account, they ought to derive their offices from his appointment, at least from his nomination, and ought to be subject to his superintendence. This view of the subject will at once suggest to us the intimate connection between the duration of the executive magistrate in office and the stability of the system of administration. To reverse and undo what has been done by a predecessor, is very often considered by a successor as the best proof he can give of his own capacity and desert; and in addition to this propensity, where the alteration has been the result of public choice, the person substituted is warranted in supposing that the dismission of his predecessor has proceeded from a

dislike to his measures; and that the less he resembles him, the more he will recommend himself to the favor of his constituents. These considerations, and the influence of personal confidences and attachments, would be likely to induce every new President to promote a change of men to fill the subordinate stations; and these causes together could not fail to occasion a disgraceful and ruinous mutability in the administration of the government.

With a positive duration of considerable extent, I connect the circumstance of re-eligibility. The first is necessary to give to the officer himself the inclination and the resolution to act his part well, and to the community time and leisure to observe the tendency of his measures, and thence to form an experimental estimate of their merits. The last is necessary to enable the people, when they see reason to approve of his conduct, to continue him in his station, in order to prolong the utility of his talents and virtues, and to secure to the government the advantage of permanency in a wise system of administration.

Nothing appears more plausible at first sight, nor more ill-founded upon close inspection, than a scheme which in relation to the present point has had some respectable advocates,—I mean that of continuing the chief magistrate in office for a certain time, and then excluding him from it, either for a limited period or forever after. This exclusion, whether temporary or perpetual, would have nearly the same effects, and these effects would be for the most part rather pernicious than salutary.

One ill effect of the exclusion would be a diminution of the inducements to good behavior. There are few men who would not feel much less zeal in the discharge of a duty when they were conscious that the advantages of the station with which it was connected must be relinquished at a determinate period, than when they were permitted to entertain a hope of OBTAINING, by MERITING, a continuance of them. This position will not be disputed so long as it is admitted that the desire of reward is one of the strongest incentives of human conduct; or that the

best security for the fidelity of mankind is to make their interests coincide with their duty. Even the love of fame, the ruling passion of the noblest minds, which would prompt a man to plan and undertake extensive and arduous enterprises for the public benefit, requiring considerable time to mature and perfect them, if he could flatter himself with the prospect of being allowed to finish what he had begun, would, on the contrary, deter him from the undertaking, when he foresaw that he must quit the scene before he could accomplish the work, and must commit that, together with his own reputation, to hands which might be unequal or unfriendly to the task. The most to be expected from the generality of men, in such a situation, is the negative merit of not doing harm, instead of the positive merit of doing good.

Another ill effect of the exclusion would be the temptation to sordid views, to peculation, and, in some instances, to usurpation. An avaricious man, who might happen to fill the office, looking forward to a time when he must at all events yield up the emoluments he enjoyed, would feel a propensity, not easy to be resisted by such a man, to make the best use of the opportunity he enjoyed while it lasted, and might not scruple to have recourse to the most corrupt expedients to make the harvest as abundant as it was transitory; though the same man, probably, with a different prospect before him, might content himself with the regular perquisites of his situation, and might even be unwilling to risk the consequences of an abuse of his opportunities. His avarice might be a guard upon his avarice. Add to this that the same man might be vain or ambitious, as well as avaricious. And if he could expect to prolong his honors by his good conduct, he might hesitate to sacrifice his appetite for them to his appetite for gain. But with the prospect before him of approaching an inevitable annihilation, his avarice would be likely to get the victory over his caution, his vanity, or his ambition.

An ambitious man, too, when he found himself seated on the summit of his country's honors, when he looked

forward to the time at which he must descend from the exalted eminence for ever, and reflected that no exertion of merit on his part could save him from the unwelcome reverse; such a man, in such a situation, would be much more violently tempted to embrace a favorable conjuncture for attempting the prolongation of his power, at every personal hazard, than if he had the probability of answering the same end by doing his duty.

Would it promote the peace of the community, or the stability of the government to have half a dozen men who had had credit enough to be raised to the seat of the supreme magistracy, wandering among the people like discontented ghosts, and sighing for a place which they were destined never more to possess?

A third ill effect of the exclusion would be, the depriving the community of the advantage of the experience gained by the chief magistrate in the exercise of his office. That experience is the parent of wisdom, is an adage the truth of which is recognized by the wisest as well as the simplest of mankind. What more desirable or more essential than this quality in the governors of nations? Where more desirable or more essential than in the first magistrate of a nation? Can it be wise to put this desirable and essential quality under the ban of the Constitution, and to declare that the moment it is acquired, its possessor shall be compelled to abandon the station in which it was acquired, and to which it is adapted? This, nevertheless, is the precise import of all those regulations which exclude men from serving their country, by the choice of their fellow-citizens, after they have by a course of service fitted themselves for doing it with a greater degree of utility.

A fourth ill effect of the exclusion would be the banishing men from stations in which, in certain emergencies of the state, their presence might be of the greatest moment to the public interest or safety. There is no nation which has not, at one period or another, experienced an absolute necessity of the services of particular men in particular situations; perhaps it would not be too strong to say, to the preservation of its political existence.

How unwise, therefore, must be every such self-denying ordinance as serves to prohibit a nation from making use of its own citizens in the manner best suited to its exigencies and circumstances! Without supposing the personal essentiality of the man, it is evident that a change of the chief magistrate, at the breaking out of a war, or at any similar crisis, for another, even of equal merit, would at all times be detrimental to the community, inasmuch as it would substitute inexperience to experience, and would tend to unhinge and set afloat the already settled train of the administration.

A fifth ill effect of the exclusion would be, that it would operate as a constitutional interdiction of stability in the administration. By NECESSITATING a change of men, in the first office of the nation, it would necessitate a mutability of measures. It is not generally to be expected, that men will vary and measures remain uniform. The contrary is the usual course of things. And we need not be apprehensive that there will be too much stability, while there is even the option of changing; nor need we desire to prohibit the people from continuing their confidence where they think it may be safely placed, and where, by constancy on their part, they may obviate the fatal inconveniences of fluctuating councils and a variable policy.

These are some of the disadvantages which would flow from the principle of exclusion. They apply most forcibly to the scheme of a perpetual exclusion; but when we consider that even a partial exclusion would always render the readmission of the person a remote and precarious object, the observations which have been made will apply nearly as fully to one case as to the other.

What are the advantages promised to counterbalance these disadvantages? They are represented to be: 1st, greater independence in the magistrate; 2d, greater security to the people. Unless the exclusion be perpetual, there will be no pretense to infer the first advantage. But even in that case, may he have no object beyond his present station, to which he may sacrifice his independ-

ence? May he have no connections, no friends, for whom he may sacrifice it? May he not be less willing by a firm conduct, to make personal enemies, when he acts under the impression that a time is fast approaching, on the arrival of which he not only MAY, but MUST, be exposed to their resentments, upon an equal, perhaps upon an inferior, footing? It is not an easy point to determine whether his independence would be most promoted or impaired by such an arrangement.

As to the second supposed advantage, there is still greater reason to entertain doubts concerning it. If the exclusion were to be perpetual, a man of irregular ambition, of whom alone there could be reason in any case to entertain apprehension, would, with infinite reluctance, yield to the necessity of taking his leave forever of a post in which his passion for power and pre-eminence had acquired the force of habit. And if he had been fortunate or adroit enough to conciliate the good-will of the people, he might induce them to consider as a very odious and unjustifiable restraint upon themselves, a provision which was calculated to debar them of the right of giving a fresh proof of their attachment to a favorite. There may be conceived circumstances in which this disgust of the people, seconding the thwarted ambition of such a favorite, might occasion greater danger to liberty, than could ever reasonably be dreaded from the possibility of a perpetuation in office, by the voluntary suffrages of the community, exercising a constitutional privilege.

There is an excess of refinement in the idea of disabling the people to continue in office men who had entitled themselves, in their opinion, to approbation and confidence; the advantages of which are at best speculative and equivocal, and are overbalanced by disadvantages far more certain and decisive. PUBLIUS.

From the New York Packet, Friday, March 21, 1788.

THE FEDERALIST. No. LXXIII.

(HAMILTON.)

To the People of the State of New York:

The third ingredient towards constituting the vigor of the executive authority, is an adequate provision for its support. It is evident that, without proper attention to this article, the separation of the executive from the legislative department would be merely nominal and nugatory. The legislature, with a discretionary power over the salary and emoluments of the Chief Magistrate, could render him as obsequious to their will as they might think proper to make him. They might, in most cases, either reduce him by famine, or tempt him by largesses, to surrender at discretion his judgment to their inclinations. These expressions, taken in all the latitude of the terms, would no doubt convey more than is intended. There are men who could neither be distressed nor won into a sacrifice of their duty; but this stern virtue is the growth of few soils; and in the main it will be found that a power over a man's support is a power over his will. If it were necessary to confirm so plain a truth by facts, examples would not be wanting, even in this country, of the intimidation or seduction of the Executive by the terrors or allurements of the pecuniary arrangements of the legislative body.

It is not easy, therefore, to commend too highly the judicious attention which has been paid to this subject in the proposed Constitution. It is there provided that "The President of the United States shall, at stated times, receive for his services a compensation WHICH SHALL NEITHER BE INCREASED NOR DIMINISHED DURING THE PERIOD FOR WHICH HE SHALL HAVE BEEN ELECTED; and he SHALL NOT

RECEIVE WITHIN THAT PERIOD ANY OTHER EMOLUMENT from the United States, or any of them." It is impossible to imagine any provision which would have been more eligible than this. The legislature, on the appointment of a President, is once for all to declare what shall be the compensation for his services during the time for which he shall have been elected. This done, they will have no power to alter it, either by increase or diminution, till a new period of service by a new election commences. They can neither weaken his fortitude by operating on his necessities, nor corrupt his integrity by appealing to his avarice. Neither the Union, nor any of its members, will be at liberty to give, nor will he be at liberty to receive, any other emolument than that which may have been determined by the first act. He can, of course, have no pecuniary inducement to renounce or desert the independence intended for him by the Constitution.

The last of the requisites to energy, which have been enumerated, are competent powers. Let us proceed to consider those which are proposed to be vested in the President of the United States.

The first thing that offers itself to our observation, is the qualified negative of the President upon the acts or resolutions of the two houses of the legislature; or, in other words, his power of returning all bills with objections, to have the effect of preventing their becoming laws, unless they should afterwards be ratified by two thirds of each of the component members of the legislative body.

The propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments, has been already suggested and repeated; the insufficiency of a mere parchment delineation of the boundaries of each, has also been remarked upon; and the necessity of furnishing each with constitutional arms for its own defense, has been inferred and proved. From these clear and indubitable principles results the propriety of a negative, either absolute or qualified, in the Executive, upon the acts of the legislative branches. Without

the one or the other, the former would be absolutely unable to defend himself against the depredations of the latter. He might gradually be stripped of his authorities by successive resolutions, or annihilated by a single vote. And in the one mode or the other, the legislative and executive powers might speedily come to be blended in the same hands. If even no propensity had ever discovered itself in the legislative body to invade the rights of the Executive, the rules of just reasoning and theoretic propriety would of themselves teach us, that the one ought not to be left to the mercy of the other, but ought to possess a constitutional and effectual power of self-defense.

But the power in question has a further use. It not only serves as a shield to the Executive, but it furnishes an additional security against the enaction of improper laws. It establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body.

The propriety of a negative has, upon some occasions, been combated by an observation, that it was not to be presumed a single man would possess more virtue and wisdom than a number of men; and that unless this presumption should be entertained, it would be improper to give the executive magistrate any species of control over the legislative body.

But this observation, when examined, will appear rather specious than solid. The propriety of the thing does not turn upon the supposition of superior wisdom or virtue in the Executive, but upon the supposition that the legislature will not be infallible; that the love of power may sometimes betray it into a disposition to encroach upon the rights of other members of the government; that a spirit of faction may sometimes pervert its deliberations; that impressions of the moment may sometimes hurry it into measures which itself, on maturer reflexion, would condemn. The primary inducement to

conferring the power in question upon the Executive is, to enable him to defend himself; the secondary one is to increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design. The oftener the measure is brought under examination, the greater the diversity in the situations of those who are to examine it, the less must be the danger of those errors which flow from want of due deliberation, or of those missteps which proceed from the contagion of some common passion or interest. It is far less probable, that culpable views of any kind should infect all the parts of the government at the same moment and in relation to the same object, than that they should by turns govern and mislead every one of them.

It may perhaps be said that the power of preventing bad laws includes that of preventing good ones; and may be used to the one purpose as well as to the other. But this objection will have little weight with those who can properly estimate the mischiefs of that inconstancy and mutability in the laws, which form the greatest blemish in the character and genius of our governments. They will consider every institution calculated to restrain the excess of law-making, and to keep things in the same state in which they happen to be at any given period, as much more likely to do good than harm; because it is favorable to greater stability in the system of legislation. The injury which may possibly be done by defeating a few good laws, will be amply compensated by the advantage of preventing a number of bad ones.

Nor is this all. The superior weight and influence of the legislative body in a free government, and the hazard to the Executive in a trial of strength with that body, afford a satisfactory security that the negative would generally be employed with great caution; and there would oftener be room for a charge of timidity than of rashness in the exercise of it. A king of Great Britain, with all his train of sovereign attributes, and with all the influence he draws from a thousand sources, would, at this day, hesitate to put a negative upon the joint resolutions

of the two houses of Parliament. He would not fail to exert the utmost resources of that influence to strangle a measure disagreeable to him, in its progress to the throne, to avoid being reduced to the dilemma of permitting it to take effect, or of risking the displeasure of the nation by an opposition to the sense of the legislative body. Nor is it probable, that he would ultimately venture to exert his prerogatives, but in a case of manifest propriety, or extreme necessity. All well-informed men in that kingdom will accede to the justness of this remark. A very considerable period has elapsed since the negative of the crown has been exercised.

If a magistrate so powerful and so well fortified as a British monarch, would have scruples about the exercise of the power under consideration, how much greater caution may be reasonably expected in a President of the United States, clothed for the short period of four years with the executive authority of a government wholly and purely republican?

It is evident that there would be greater danger of his not using his power when necessary, than of his using it too often, or too much. An argument, indeed, against its expediency, has been drawn from this very source. It has been represented, on this account, as a power odious in appearance, useless in practice. But it will not follow, that because it might be rarely exercised, it would never be exercised. In the case for which it is chiefly designed, that of an immediate attack upon the constitutional rights of the Executive, or in a case in which the public good was evidently and palpably sacrificed, a man of tolerable firmness would avail himself of his constitutional means of defense, and would listen to the admonitions of duty and responsibility. In the former supposition, his fortitude would be stimulated by his immediate interest in the power of his office; in the latter, by the probability of the sanction of his constituents, who, though they would naturally incline to the legislative body in a doubtful case, would hardly suffer their partiality to delude them in a very plain case. I speak now with an eye to a magistrate

possessing only a common share of firmness. There are men who, under any circumstances, will have the courage to do their duty at every hazard.

But the convention have pursued a mean in this business, which will both facilitate the exercise of the power vested in this respect in the executive magistrate, and make its efficacy to depend on the sense of a considerable part of the legislative body. Instead of an absolute negative, it is proposed to give the Executive the qualified negative already described. This is a power which would be much more readily exercised than the other. A man who might be afraid to defeat a law by his single VETO, might not scruple to return it for reconsideration; subject to being finally rejected only in the event of more than one third of each house concurring in the sufficiency of his objections. He would be encouraged by the reflection, that if his opposition should prevail, it would embark in it a very respectable proportion of the legislative body, whose influence would be united with his in supporting the propriety of his conduct in the public opinion. A direct and categorical negative has something in the appearance of it more harsh, and more apt to irritate, than the mere suggestion of argumentative objections to be approved or disapproved by those to whom they are addressed. In proportion as it would be less apt to offend, it would be more apt to be exercised; and for this very reason, it may in practice be found more effectual. It is to be hoped that it will not often happen that improper views will govern so large a proportion as two thirds of both branches of the legislature at the same time; and this, too, in spite of the counterposing weight of the Executive. It is at any rate far less probable that this should be the case, than that such views should taint the resolutions and conduct of a bare majority. A power of this nature in the Executive, will often have a silent and unperceived, though forcible, operation. When men, engaged in unjustifiable pursuits, are aware that obstructions may come from a quarter which they cannot control, they will often be restrained by the bare apprehension of opposition, from doing what they would

with eagerness rush into, if no such external impediments were to be feared.

This qualified negative, as has been elsewhere remarked, is in this State vested in a council, consisting of the governor, with the chancellor and judges of the Supreme Court, or any two of them. It has been freely employed upon a variety of occasions, and frequently with success. And its utility has become so apparent, that persons who, in compiling the Constitution, were violent opposers of it, have from experience become its declared admirers.*

I have in another place remarked, that the convention, in the formation of this part of their plan, had departed from the model of the constitution of this State, in favor of that of Massachusetts. Two strong reasons may be imagined for this preference. One is that the judges, who are to be the interpreters of the law, might receive an improper bias, from having given a previous opinion in their revisionary capacities; the other is that by being often associated with the Executive, they might be induced to embark too far in the political views of that magistrate, and thus a dangerous combination might by degrees be cemented between the executive and judiciary departments. It is impossible to keep the judges too distinct from every other avocation than that of expounding the laws. It is peculiarly dangerous to place them in a situation to be either corrupted or influenced by the Executive. PUBLIUS.

* Mr. Abraham Yates, a warm opponent of the plan of the convention is of this number.

From the New York Packet, Tuesday, March 25, 1788.

THE FEDERALIST. No. LXXIV.

(HAMILTON.)

To the People of the State of New York:

The President of the United States is to be "commander-in-chief of the army and navy of the United States, and of the militia of the several States WHEN CALLED INTO THE ACTUAL SERVICE of the United States." The propriety of this provision is so evident in itself, and it is, at the same time, so consonant to the precedents of the State constitutions in general, that little need be said to explain or enforce it. Even those of them which have, in other respects, coupled the chief magistrate with a council, have for the most part concentrated the military authority in him alone. Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war implies the direction of the common strength; and the power of directing and employing the common strength, forms a usual and essential part in the definition of the executive authority.

"The President may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective officers." This I consider as a mere redundancy in the plan, as the right for which it provides would result of itself from the office.

He is also to be authorized to grant "reprieves and pardons for offenses against the United States, EXCEPT IN CASES OF IMPEACHMENT." Humanity and good policy conspire to dictate, that the benign prerogative of pardoning should be as little as possible fettered or embarrassed. The criminal code of every country partakes so

much of necessary severity, that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too sanguinary and cruel. As the sense of responsibility is always strongest, in proportion as it is undivided, it may be inferred that a single man would be most ready to attend to the force of those motives which might plead for a mitigation of the rigor of the law, and least apt to yield to considerations which were calculated to shelter a fit object of its vengeance. The reflection that the fate of a fellow-creature depended on his *sole fiat*, would naturally inspire scrupulousness and caution; the dread of being accused of weakness or connivance, would beget equal circumspection, though of a different kind. On the other hand, as men generally derive confidence from their numbers, they might often encourage each other in an act of obduracy, and might be less sensible to the apprehension of suspicion or censure for an injudicious or affected clemency. On these accounts, one man appears to be a more eligible dispenser of the mercy of government, than a body of men.

The expediency of vesting the power of pardoning in the President has, if I mistake not, been only contested in relation to the crime of treason. This, it has been urged, ought to have depended upon the assent of one, or both, of the branches of the legislative body. I shall not deny that there are strong reasons to be assigned for requiring in this particular the concurrence of that body, or of a part of it. As treason is a crime levelled at the immediate being of the society, when the laws have once ascertained the guilt of the offender, there seems a fitness in referring the expediency of an act of mercy towards him to the judgment of the legislature. And this ought the rather to be the case, as the supposition of the connivance of the Chief Magistrate ought not to be entirely excluded. But there are also strong objections to such a plan. It is not to be doubted, that a single man of prudence and good sense is better fitted, in delicate conjunctures, to balance the motives which may plead for and against the remission of the punishment,

than any numerous body whatever. It deserves particular attention, that treason will often be connected with seditions which embrace a large proportion of the community; as lately happened in Massachusetts. In every such case, we might expect to see the representation of the people tainted with the same spirit which had given birth to the offense. And when parties were pretty equally matched, the secret sympathy of the friends and favorers of the condemned person, availing itself of the good-nature and weakness of others, might frequently bestow impunity where the terror of an example was necessary. On the other hand, when the sedition had proceeded from causes which had inflamed the resentments of the major party, they might often be found obstinate and inexorable, when policy demanded a conduct of forbearance and clemency. But the principal argument for reposing the power of pardoning in this case to the Chief Magistrate is this: in seasons of insurrection or rebellion, there are often critical moments, when a well-timed offer of pardon to the insurgents or rebels may restore the tranquillity of the commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recall. The dilatory process of convening the legislature, or one of its branches, for the purpose of obtaining its sanction to the measure, would frequently be the occasion of letting slip the golden opportunity. The loss of a week, a day, an hour, may sometimes be fatal. If it should be observed, that a discretionary power, with a view to such contingencies, might be occasionally conferred upon the President, it may be answered in the first place, that it is questionable, whether, in a limited Constitution, that power could be delegated by law; and in the second place, that it would generally be impolitic beforehand to take any step which might hold out the prospect of impunity. A proceeding of this kind, out of the usual course, would be likely to be construed into an argument of timidity or of weakness, and would have a tendency to embolden guilt.

PUBLIUS.

For the Independent Journal.

THE FEDERALIST. No. LXXV.

(HAMILTON.)

To the People of the State of New York:

The President is to have power, "by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur."

Though this provision has been assailed, on different grounds, with no small degree of vehemence, I scruple not to declare my firm persuasion, that it is one of the best digested and most unexceptionable parts of the plan. One ground of objection is the trite topic of the intermixture of powers; some contending that the President ought alone to possess the power of making treaties; others, that it ought to have been exclusively deposited in the Senate. Another source of objection is derived from the small number of persons by whom a treaty may be made. Of those who espouse this objection, a part are of opinion that the House of Representatives ought to have been associated in the business, while another part seem to think that nothing more was necessary than to have substituted two thirds of ALL the members of the Senate, to two thirds of the members PRESENT. As I flatter myself the observations made in a preceding number upon this part of the plan must have sufficed to place it, to a discerning eye, in a very favorable light, I shall here content myself with offering only some supplementary remarks, principally with a view to the objections which have been just stated.

With regard to the intermixture of powers, I shall rely upon the explanations already given in other places, of the true sense of the rule upon which that objection is founded; and shall take it for granted, as an inference

from them, that the union of the Executive with the Senate, in the article of treaties, is no infringement of that rule. I venture to add, that the particular nature of the power of making treaties indicates a peculiar propriety in that union. Though several writers on the subject of government place that power in the class of executive authorities, yet this is evidently an arbitrary disposition; for if we attend carefully to its operation, it will be found to partake more of the legislative than of the executive character, though it does not seem strictly to fall within the definition of either of them. The essence of the legislative authority is to enact laws, or, in other words, to prescribe rules for the regulation of the society; while the execution of the laws, and the employment of the common strength, either for this purpose or for the common defense, seem to comprise all the functions of the executive magistrate. The power of making treaties is, plainly, neither the one nor the other. It relates neither to the execution of the subsisting laws, nor to the enaction of new ones; and still less to an exertion of the common strength. Its objects are CONTRACTS with foreign nations, which have the force of law, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subject, but agreements between sovereign and sovereign. The power in question seems therefore to form a distinct department, and to belong, properly, neither to the legislative nor to the executive. The qualities elsewhere detailed as indispensable in the management of foreign negotiations, point out the Executive as the most fit agent in those transactions; while the vast importance of the trust, and the operation of treaties as laws, plead strongly for the participation of the whole or a portion of the legislative body in the office of making them.

However proper or safe it may be in governments where the executive magistrate is an hereditary monarch, to commit to him the entire power of making treaties, it would be utterly unsafe and improper to intrust that power to an elective magistrate of four years' duration.

It has been remarked, upon another occasion, and the remark is unquestionably just, that an hereditary monarch, though often the oppressor of his people, has personally too much stake in the government to be in any material danger of being corrupted by foreign powers. But a man raised from the station of a private citizen to the rank of chief magistrate, possessed of a moderate or slender fortune, and looking forward to a period not very remote when he may probably be obliged to return to the station from which he was taken, might sometimes be under temptations to sacrifice his duty to his interest, which it would require superlative virtue to withstand. An avaricious man might be tempted to betray the interests of the state to the acquisition of wealth. An ambitious man might make his own aggrandizement, by the aid of a foreign power, the price of his treachery to his constituents. The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.

To have intrusted the power of making treaties to the Senate alone, would have been to relinquish the benefits of the constitutional agency of the President in the conduct of foreign negotiations. It is true that the Senate would, in that case, have the option of employing him in this capacity, but they would also have the option of letting it alone, and pique or cabal might induce the latter rather than the former. Besides this, the ministerial servant of the Senate could not be expected to enjoy the confidence and respect of foreign powers in the same degree with the constitutional representatives of the nation, and, of course, would not be able to act with an equal degree of weight or efficacy. While the Union would, from this cause, lose a considerable advantage in the management of its external concerns, the people would lose the additional security which would result from the

co-operation of the Executive. Though it would be imprudent to confide in him solely so important a trust, yet it cannot be doubted that his participation would materially add to the safety of the society. It must indeed be clear to a demonstration that the joint possession of the power in question, by the President and Senate, would afford a greater prospect of security, than the separate possession of it by either of them. And whoever has maturely weighed the circumstances which must concur in the appointment of a President, will be satisfied that the office will always bid fair to be filled by men of such characters as to render their concurrence in the formation of treaties peculiarly desirable, as well on the score of wisdom, as on that of integrity.

The remarks made in a former number, which have been alluded to in another part of this paper, will apply with conclusive force against the admission of the House of Representatives to a share in the formation of treaties. The fluctuating and, taking its future increase into the account, the multitudinous composition of that body, forbid us to expect in it those qualities which are essential to the proper execution of such a trust. Accurate and comprehensive knowledge of foreign politics; a steady and systematic adherence to the same views; a nice and uniform sensibility to national character; decision, SECRECY, and despatch, are incompatible with the genius of a body so variable and so numerous. The very complication of the business, by introducing a necessity of the concurrence of so many different bodies, would of itself afford a solid objection. The greater frequency of the calls upon the House of Representatives, and the greater length of time which it would often be necessary to keep them together when convened, to obtain their sanction in the progressive stages of a treaty, would be a source of so great inconvenience and expense as alone ought to condemn the project.

The only objection which remains to be canvassed, is that which would substitute the proportion of two thirds of all the members composing the senatorial body, to

that of two thirds of the members PRESENT. It has been shown, under the second head of our inquiries, that all provisions which require more than the majority of any body to its resolutions, have a direct tendency to embarrass the operations of the government, and an indirect one to subject the sense of the majority to that of the minority. This consideration seems sufficient to determine our opinion, that the convention have gone as far in the endeavor to secure the advantage of numbers in the formation of treaties as could have been reconciled either with the activity of the public councils or with a reasonable regard to the major sense of the community. If two thirds of the whole number of members had been required, it would, in many cases, from the non-attendance of a part, amount in practice to a necessity of unanimity. And the history of every political establishment in which this principle has prevailed, is a history of impotence, perplexity, and disorder. Proofs of this position might be adduced from the examples of the Roman Tribuneship, the Polish Diet, and the States-General of the Netherlands, did not an example at home render foreign precedents unnecessary.

To require a fixed proportion of the whole body would not, in all probability, contribute to the advantages of a numerous agency, better then merely to require a proportion of the attending members. The former, by making a determinate number at all times requisite to a resolution, diminishes the motives to punctual attendance. The latter, by making the capacity of the body to depend on a PROPORTION which may be varied by the absence or presence of a single member, has the contrary effect. And as, by promoting punctuality, it tends to keep the body complete, there is great likelihood that its resolutions would generally be dictated by as great a number in this case as in the other; while there would be much fewer occasions of delay. It ought not to be forgotten that, under the existing Confederation, two members MAY, and usually DO, represent a State; whence it happens that Congress, who now are solely invested with ALL THE

POWERS of the Union, rarely consist of a greater number of persons than would compose the intended Senate. If we add to this, that as the members vote by States, and that where there is only a single member present from a State, his vote is lost, it will justify a supposition that the active voices in the Senate, where the members are to vote individually, would rarely fall short in number of the active voices in the existing Congress. When, in addition to these considerations, we take into view the co-operation of the President, we shall not hesitate to infer that the people of America would have greater security against an improper use of the power of making treaties, under the new Constitution, than they now enjoy under the Confederation. And when we proceed still one step further, and look forward to the probable augmentation of the Senate, by the erection of new States, we shall not only perceive ample ground of confidence in the sufficiency of the members to whose agency that power will be intrusted, but we shall probably be led to conclude that a body more numerous than the Senate would be likely to become, would be very little fit for the proper discharge of the trust. PUBLIUS.

From the New York Packet, Tuesday, April 1, 1788.

THE FEDERALIST. No. LXXVI.

(HAMILTON.)

To the People of the State of New York:

The President is "to NOMINATE, and, by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise provided for in the Constitution. But the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, or in the courts of law, or in the heads of departments. The President shall have power to fill up ALL VACANCIES which may happen DURING THE RECESS OF THE SENATE, by granting commissions which shall EXPIRE at the end of their next session."

It has been observed in a former paper, that "the true test of a good government is its aptitude and tendency to produce a good administration." If the justness of this observation be admitted, the mode of appointing the officers of the United States contained in the foregoing clauses, must, when examined, be allowed to be entitled to particular commendation. It is not easy to conceive a plan better calculated than this to promote a judicious choice of men for filling the offices of the Union; and it will not need proof, that on this point must essentially depend the character of its administration.

It will be agreed on all hands, that the power of appointment, in ordinary cases, ought to be modified in one of three ways. It ought either to be vested in a single man, or in a SELECT assembly of a moderate number; or in a single man, with the concurrence of such an assembly. The exercise of it by the people at large will be readily

admitted to be impracticable; as waiving every other consideration, it would leave them little time to do anything else. When, therefore, mention is made in the subsequent reasonings of an assembly or body of men, what is said must be understood to relate to a select body or assembly, of the description already given. The people collectively, from their number and from their dispersed situation, cannot be regulated in their movements by that systematic spirit of cabal and intrigue, which will be urged as the chief objections to reposing the power in question in a body of men.

Those who have themselves reflected upon the subject, or who have attended to the observations made in other parts of these papers, in relation to the appointment of the President, will, I presume, agree to the position, that there would always be great probability of having the place supplied by a man of abilities, at least respectable. Premising this, I proceed to lay it down as a rule, that one man of discernment is better fitted to analyze and estimate the peculiar qualities adapted to particular offices, than a body of men of equal or perhaps even of superior discernment.

The sole and undivided responsibility of one man will naturally beget a livelier sense of duty and a more exact regard to reputation. He will, on this account, feel himself under stronger obligations, and more interested to investigate with care the qualities requisite to the stations to be filled, and to prefer with impartiality the persons who may have the fairest pretensions to them. He will have FEWER personal attachments to gratify, than a body of men who may each be supposed to have an equal number; and will be so much the less liable to be misled by the sentiments of friendship and of affection. A single well-directed man, by a single understanding, cannot be distracted and warped by that diversity of views, feelings, and interests, which frequently distract and warp the resolutions of a collective body. There is nothing so apt to agitate the passions of mankind as personal considerations. whether they relate to ourselves or to

others, who are to be the objects of our choice or preference. Hence, in every exercise of the power of appointing to offices, by an assembly of men, we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. The choice which may at any time happen to be made under such circumstances, will of course be the result either of a victory gained by one party over the other, or of a compromise between the parties. In either case, the intrinsic merit of the candidate will be too often out of sight. In the first, the qualifications best adapted to uniting the suffrages of the party, will be more considered than those which fit the person for the station. In the last, the coalition will commonly turn upon some interested equivalent: "Give us the man we wish for this office, and you shall have the one you wish for that." This will be the usual condition of the bargain. And it will rarely happen that the advancement of the public service will be the primary object either of party victories or of party negotiations.

The truth of the principles here advanced seems to have been felt by the most intelligent of those who have found fault with the provision made, in this respect, by the convention. They contend that the President ought solely to have been authorized to make the appointments under the federal government. But it is easy to show, that every advantage to be expected from such an arrangement would, in substance, be derived from the power of NOMINATION, which is proposed to be conferred upon him; while several disadvantages which might attend the absolute power of appointment in the hands of that officer would be avoided. In the act of nomination, his judgment alone would be exercised; and as it would be his sole duty to point out the man who, with the approbation of the Senate, should fill an office, his responsibility would be as complete as if he were to make the final appointment. There can, in this view, be no difference

between nominating and appointing. The same motives which would influence a proper discharge of his duty in one case, would exist in the other. And as no man could be appointed but on his previous nomination, every man who might be appointed would be, in fact, his choice.

But might not his nomination be overruled? I grant it might, yet this could only be to make place for another nomination by himself. The person ultimately appointed must be the object of his preference, though perhaps not in the first degree. It is also not very probable that his nomination would often be overruled. The Senate could not be tempted, by the preference they might feel to another, to reject the one proposed; because they could not assure themselves, that the person they might wish would be brought forward by a second or by any subsequent nomination. They could not even be certain, that a future nomination would present a candidate in any degree more acceptable to them; and as their dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the chief magistrate, it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal.

To what purpose then require the co-operation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration.

It will readily be comprehended, that a man who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entier branch of the

legislature. The possibility of rejection would be a strong motive to care in proposing. The danger to his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favoritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to the one and to the other. He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure.

To this reasoning it has been objected that the President, by the influence of the power of nomination, may secure the complaisance of the Senate to his views. This supposition of universal venalty in human nature is little less an error in political reasoning, than the supposition of universal rectitude. The institution of delegated power implies, that there is a portion of virtue and honor among mankind, which may be a reasonable foundation of confidence; and experience justifies the theory. It has been found to exist in the most corrupt periods of the most corrupt governments. The venalty of the British House of Commons has been long a topic of accusation against that body, in the country to which they belong as well as in this; and it cannot be doubted that the charge is, to a considerable extent, well founded. But it is as little to be doubted, that there is always a large proportion of the body, which consists of independent and public-spirited men, who have an influential weight in the councils of the nation. Hence it is (the present reign not excepted) that the sense of that body is often seen to control the inclinations of the monarch, both with regard to men and to measures. Though it might therefore be allowable to suppose that the Executive might occasionally influence some individuals in the Senate, yet

the supposition, that he could in general purchase the integrity of the whole body, would be forced and improbable. A man disposed to view human nature as it is, without either flattering its virtues or exaggerating its vices, will see sufficient ground of confidence in the probity of the Senate, to rest satisfied, not only that it will be impracticable to the Executive to corrupt or seduce a majority of its members, but that the necessity of its co-operation, in the business of appointments, will be a considerable and salutary restraint upon the conduct of that magistrate. Nor is the integrity of the Senate the only reliance. The Constitution has provided some important guards against the danger of executive influence upon the legislative body: it declares that "No senator or representative shall during the time FOR WHICH HE WAS ELECTED, be appointed to any civil office under the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person, holding any office under the United States, shall be a member of either house during his continuance in office." PUBLIUS.

From the New York Packet, Friday, April 4, 1788.

THE FEDERALIST. No. LXXVII.

(HAMILTON.)

To the People of the State of New York:

It has been mentioned as one of the advantages to be expected from the co-operation of the Senate, in the business of appointments, that it would contribute to the stability of the administration. The consent of that body would be necessary to displace as well as to appoint. A change of the Chief Magistrate, therefore, would not occasion so violent or so general a revolution in the officers of the government as might be expected, if he were the sole disposer of offices. Where a man in any station had given satisfactory evidence of his fitness for it, a new President would be restrained from attempting a change in favor of a person more agreeable to him, by the apprehension that a discountenance of the Senate might frustrate the attempt, and bring some degree of discredit upon himself. Those who can best estimate the value of a steady administration, will be most disposed to prize a provision which connects the official existence of public men with the approbation or disapprobation of that body which, from the greater permanency of its own composition, will in all probability be less subject to inconstancy than any other member of the government.

To this union of the Senate with the President, in the article of appointments, it has in some cases been suggested that it would serve to give the President an undue influence over the Senate, and in others that it would have an opposite tendency,—a strong proof that neither suggestion is true.

To state the first in its proper form, is to refute it. It amounts to this: the President would have an improper

INFLUENCE OVER the Senate, because the Senate would have the power of RESTRAINING him. This is an absurdity in terms. It cannot admit of a doubt that the entire power of appointment would enable him much more effectually to establish a dangerous empire over that body, than a mere power of nomination subject to their control.

Let us take a view of the converse of the proposition: "the Senate would influence the Executive." As I have had occasion to remark in several other instances, the indistinctness of the objection forbids a precise answer. In what manner is this influence to be exerted? In relation to what objects? The power of influencing a person, in the sense in which it is here used, must imply a power of conferring a benefit upon him. How could the Senate confer a benefit upon the President by the manner of employing their right of negative upon his nominations? If it be said they might sometimes gratify him by an acquiescence in a favorite choice, when public motives might dictate a different conduct, I answer, that the instances in which the President could be personally interested in the result, would be too few to admit of his being materially affected by the compliances of the Senate. The POWER which can ORIGINATE the disposition of honors and emoluments, is more likely to attract than to be attracted by the POWER which can merely obstruct their course. If by influencing the President be meant RESTRAINING him, this is precisely what must have been intended. And it has been shown that the restraint would be salutary, at the same time that it would not be such as to destroy a single advantage to be looked for from the uncontrolled agency of that Magistrate. The right of nomination would produce all the good of that of appointment, and would in a great measure avoid its evils.

Upon a comparison of the plan for the appointment of the officers of the proposed government with that which is established by the constitution of this State, a decided preference must be given to the former. In that plan the power of nomination is unequivocally vested in the Executive. And as there would be a necessity for submitting

each nomination to the judgment of an entire branch of the legislature, the circumstances attending an appointment, from the mode of conducting it, would naturally become matters of notoriety; and the public would be at no loss to determine what part had been performed by the different actors. The blame of a bad nomination would fall upon the President singly and absolutely. The censure of rejecting a good one would lie entirely at the door of the Senate; aggravated by the consideration of their having counteracted the good intentions of the Executive. If an ill appointment should be made, the Executive for nominating, and the Senate for approving, would participate, though in different degrees, in the opprobrium and disgrace.

The reverse of all this characterizes the manner of appointment in this State. The council of appointment consists of from three to five persons, of whom the governor is always one. This small body, shut up in a private apartment, impenetrable to the public eye, proceed to the execution of the trust committed to them. It is known that the governor claims the right of nomination, upon the strength of some ambiguous expressions in the constitution; but it is not known to what extent, or in what manner he exercises it; nor upon what occasions he is contradicted or opposed. The censure of a bad appointment, on account of the uncertainty of its author, and for want of a determinate object, has neither poignancy nor duration. And while an unbounded field for cabal and intrigue lies open, all idea of responsibility is lost. The most that the public can know, is that the governor claims the right of nomination; that TWO out of the inconsiderable number of FOUR men can too often be managed without much difficulty; that if some of the members of a particular council should happen to be of an uncomplying character, it is frequently not impossible to get rid of their opposition by regulating the times of meeting in such a manner as to render their attendance inconvenient; and that from whatever cause it may proceed, a great number of very improper appointments are from time to time made. Whether a governor of

this State avails himself of the ascendant he must necessarily have, in this delicate and important part of the administration, to prefer to offices men who are best qualified for them, or whether he prostitutes that advantage to the advancement of persons whose chief merit is their implicit devotion to his will, and to the support of a despicable and dangerous system of personal influence, are questions which, unfortunately for the community, can only be the subjects of speculation and conjecture.

Every mere council of appointment, however constituted, will be a conclave, in which cabal and intrigue will have their full scope. Their number, without an unwarrantable increase of expense, cannot be large enough to preclude a facility of combination. And as each member will have his friends and connections to provide for, the desire of mutual gratification will beget a scandalous bartering of votes and bargaining for places. The private attachments of one man might easily be satisfied; but to satisfy the private attachments of a dozen, or of twenty men, would occasion a monopoly of all the principal employments of the government in a few families, and would lead more directly to an aristocracy or an oligarchy than any measure that could be contrived. If, to avoid an accumulation of offices, there was to be a frequent change in the persons who were to compose the council, this would involve the mischiefs of a mutable administration in their full extent. Such a council would also be more liable to executive influence than the Senate, because they would be fewer in number, and would act less immediately under the public inspection. Such a council, in fine, as a substitute for the plan of the convention, would be productive of an increase of expense, a multiplication of the evils which spring from favoritism and intrigue in the distribution of public honors, a decrease of stability in the administration of the government, and a diminution of the security against an undue influence of the Executive. And yet such a council has been warmly contended for as an essential amendment in the proposed Constitution.

I could not with propriety conclude my observations on the subject of appointments without taking notice of a scheme for which there have appeared some, though but few advocates; I mean that of uniting the House of Representatives in the power of making them. I shall, however, do little more than mention it, as I cannot imagine that it is likely to gain the countenance of any considerable part of the community. A body so fluctuating and at the same time so numerous, can never be deemed proper for the exercise of that power. Its unfitness will appear manifest to all, when it is recollected that in half a century it may consist of three or four hundred persons. All the advantages of the stability, both of the Executive and of the Senate, would be defeated by this union, and infinite delays and embarrassments would be occasioned. The example of most of the States in their local constitutions encourages us to reprobate the idea.

The only remaining powers of the Executive are comprehended in giving information to Congress of the state of the Union; in recommending to their consideration such measures as he shall judge expedient; in convening them, or either branch, upon extraordinary occasions; in adjourning them when they cannot themselves agree upon the time of adjournment; in receiving ambassadors and other public ministers; in faithfully executing the laws; and in commissioning all the officers of the United States.

Except some cavils about the power of convening EITHER house of the legislature, and that of receiving ambassadors, no objection has been made to this class of authorities; nor could they possibly admit of any. It required, indeed, an insatiable avidity for censure to invent exceptions to the parts which have been excepted to. In regard to the power of convening either house of the legislature, I shall barely remark, that in respect to the Senate at least, we can readily discover a good reason for it. As this body has a concurrent power with the Executive in the article of treaties, it might often be necessary to call it together with a view to this object, when it would be unnecessary and improper to convene

the House of Representatives. As to the reception of ambassadors, what I have said in a former paper will furnish a sufficient answer.

We have now completed a survey of the structure and powers of the executive department, which, I have endeavored to show, combines, as far as republican principles will admit, all the requisites to energy. The remaining inquiry is: Does it also combine the requisites to safety, in a republican sense,—a due dependence on the people, a due responsibility? The answer to this question has been anticipated in the investigation of its other characteristics, and is satisfactorily deducible from these circumstances; from the election of the President once in four years by persons immediately chosen by the people for that purpose; and from his being at all times liable to impeachment, trial, dismission from office, incapacity to serve in any other, and to forfeiture of life and estate by subsequent prosecution in the common course of law. But these precautions, great as they are, are not the only ones which the plan of the convention has provided in favor of the public security. In the only instances in which the abuse of the executive authority was materially to be feared, the Chief Magistrate of the United States would, by that plan, be subjected to the control of a branch of the legislative body. What more could be desired by an enlightened and reasonable people?

PUBLIUS.

From McLean's *Edition, New York*, M.DCC.LXXXVIII.

THE FEDERALIST. No. LXXVIII.

(HAMILTON.)

To the People of the State of New York:

We proceed now to an examination of the judiciary department of the proposed government.

In unfolding the defects of the existing Confederation, the utility and necessity of a federal judicature have been clearly pointed out. It is the less necessary to recapitulate the considerations there urged, as the propriety of the institution in the abstract is not disputed; the only questions which have been raised being relative to the manner of constituting it, and to its extent. To these points, therefore, our observations shall be confined.

The manner of constituting it seems to embrace these several objects: 1st. The mode of appointing the judges. 2d. The tenure by which they are to hold their places. 3d. The partition of the judiciary authority between different courts, and their relations to each other.

First. As to the mode of appointing the judges; this is the same with that of appointing the officers of the Union in general, and has been so fully discussed in the two last numbers, that nothing can be said here which would not be useless repetition.

Second. As to the tenure by which the judges are to hold their places; this chiefly concerns their duration in office; the provisions for their support; the precautions for their responsibility.

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices during good behavior; which is conformable to the most approved of the State constitutions and among

the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan, is no light symptom of the rage for objection, which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power*; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks.

*The celebrated Montesquieu, speaking of them, says: «Of the three powers above mentioned, the judiciary is next to nothing.»—«Spirit of Laws,» vol. i., page 186.

It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive. For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers."* And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex-post-facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which

* *Idem*, page 181.

can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

This exercise of judicial discretion, in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens, that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by any fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is, that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable, that between the interfering acts of an EQUAL authority, that which was the last indication of its will should have the preference.

But in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and sub-

ordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it prove any thing, would prove that there ought to be no judges distinct from that body.

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies,* in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever

* *Vide* «Protest of the Minority of the Convention of Pennsylvania,» Martin's Speech, etc.

they find it inconsistent with their happiness, yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.

But it is not with a view to infractions of the Constitution only, that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed, but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments, than but few may be aware of. The benefits of the integrity and moderation

of the judiciary have already been felt in more States than one; and though they may have displeased those whose sinister expectations they may have disappointed, they must have commanded the esteem and applause of all the virtuous and disinterested. Considerate men, of every description, ought to prize whatever will tend to beget or fortify that temper in the courts: as no man can be sure that he may not be to-morrow the victim of a spirit of injustice, by which he may be a gainer to-day. And every man must now feel, that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress.

That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the Executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws.

There is yet a further and a weightier reason for the permanency of the judicial offices, which is deducible from the nature of the qualifications they require. It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and

it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us, that the government can have no great option between fit character; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity. In the present circumstances of this country, and in those in which it is likely to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed, that they are far inferior to those which present themselves under the other aspects of the subject.

Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established GOOD BEHAVIOR as the tenure of their judicial offices, in point of duration; and that so far from being blamable on this account, their plan would have been inexcusably defective, if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution.

PUBLIUS.

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THE FEDERALIST. No. LXXIX.

(HAMILTON.)

To the People of the State of New York:

Next to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support. The remark made in relation to the President is equally applicable here. In the general course of human nature, A POWER OVER A MAN'S SUBSISTENCE AMOUNTS TO A POWER OVER HIS WILL. And we can never hope to see realized in practice, the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resources on the occasional grants of the latter. The enlightened friends to good government in every State, have seen cause to lament the want of precise and explicit precautions in the State constitutions on this head. Some of these indeed have declared that PERMANENT* salaries should be established for the judges; but the experiment has in some instances shown that such expressions are not sufficiently definite to preclude legislative evasions. Something still more positive and unequivocal has been evinced to be requisite. The plan of the convention accordingly has provided that the judges of the United States "shall at STATED TIMES receive for their services a compensation which shall not be DIMINISHED during their continuance in office."

This, all circumstances considered, is the most eligible provision that could have been devised. It will readily be understood that the fluctuations in the value of money and in the state of society rendered a fixed rate of com-

* *Vide* "Constitution of Massachusetts," chapter 2, section 1, article 13.

pensation in the Constitution inadmissible. What might be extravagant to-day, might in half a century become penurious and inadequate. It was therefore necessary to leave it to the discretion of the legislature to vary its provisions in conformity to the variations in circumstances, yet under such restrictions as to put it out of the power of that body to change the condition of the individual for the worse. A man may then be sure of the ground upon which he stands, and can never be deterred from his duty by the apprehension of being placed in a less eligible situation. The clause which has been quoted combines both advantages. The salaries of judicial officers may from time to time be altered, as occasion shall require, yet so as never to lessen the allowance with which any particular judge comes into office, in respect to him. It will be observed that a difference has been made by the convention between the compensation of the President and of the judges, That of the former can neither be increased nor diminished; that of the latter can only not be diminished. This probably arose from the difference in the duration of the respective offices. As the President is to be elected for no more than four years, it can rarely happen that an adequate salary, fixed at the commencement of that period, will not continue to be such to its end. But with regard to the judges, who, if they behave properly, will be secured in their places for life, it may well happen, especially in the early stages of the government, that a stipend, which would be very sufficient at their first appointment, would become too small in the progress of their service.

This provision for the support of the judges bears every mark of prudence and efficacy; and it may be safely affirmed that, together with the permanent tenure of their offices, it affords a better prospect of their independence than is discoverable in the constitutions of any of the States in regard to their own judges.

The precautions for their responsibility are comprised in the article respecting impeachments. They are liable to be impeached for malconduct by the House of Repre-

sentatives, and tried by the Senate; and, if convicted, may be dismissed from office, and disqualified for holding any other. This is the only provision on the point which is consistent with the necessary independence of the judicial character, and is the c " one which we find in our own Constitution in respect . our own judges.

The want of a provision for removing the judges on account of inability has been a subject of complaint. But all considerate men will be sensible that such a provision would either not be practiced upon or would be more liable to abuse than calculated to answer any good purpose. The mensuration of the faculties of the mind has, I believe, no place in the catalogue of known arts. An attempt to fix the boundary between the regions of ability and inability, would much oftener give scope to personal and party attachments and enmities than advance the interests of justice or the public good. The result, except in the case of insanity, must for the most part be arbitrary; and insanity, without any formal or express provision, may be safely pronounced to be a virtual disqualification.

The constitution of New York, to avoid investigations that must forever be vague and dangerous, has taken a particular age as the criterion of inability. No man can be a judge beyond sixty. I believe there are few at present who do not disapprove of this provision. There is no station, in relation to which it is less proper than to that of a judge. The deliberating and comparing faculties generally preserve their strength much beyond that period in men who survive it; and when, in addition to this circumstance, we consider how few there are who outlive the season of intellectual vigor, and how improbable it is that any considerable portion of the bench, whether more or less numerous, should be in such a situation at the same time, we shall be ready to conclude that limitations of this sort have little to recommend them. In a republic, where fortunes are not affluent, and pensions not expedient, the dismission of men from stations in

which they have served their country long and usefully, on which they depend for subsistence, and from which it will be too late to resort to any other occupation for a livelihood, ought to have some better apology to humanity than is to be found in the imaginary danger of a superannuated bench. PUBLIUS.

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THE FEDERALIST. No. LXXX.

(HAMILTON.)

To the People of the State of New York:

To JUDGE with accuracy of the proper extent of the federal judicature, it will be necessary to consider, in the first place, what are its proper objects.

It seems scarcely to admit of controversy, that the judicary authority of the Union ought to extend to these several descriptions of cases: 1st, to all those which arise out of the laws of the United States, passed in pursuance of their just and constitutional powers of legislation; 2d, to all those which concern the execution of the provisions expressly contained in the articles of Union; 3d, to all those in which the United States are a party; 4th, to all those which involve the PEACE of the CONFEDERACY, whether they relate to the intercourse between the United States and foreign nations, or to that between the States themselves; 5th, to all those which originate on the high seas, and are of admiralty or maritime jurisdiction; and, lastly, to all those in which the State tribunals cannot be supposed to be impartial and unbiased.

The first point depends upon this obvious consideration, that there ought always to be a constitutional method of giving efficacy to constitutional provisions. What, for instance, would avail restrictions on the authority of the State legislatures, without some constitutional mode of enforcing the observance of them? The States, by the plan of the convention, are prohibited from doing a variety of things, some of which are incompatible with the interests of the Union, and others with the principles of good government. The imposition of duties on imported arti-

cles, and the emission of paper money, are specimens of each kind. No man of sense will believe, that such prohibitions would be scrupulously regarded, without some effectual power in the government to restrain or correct the infractions of them. This power must either be a direct negative on the State laws, or an authority in the federal courts to overrule such as might be in manifest contravention of the articles of Union. There is no third course that I can imagine. The latter appears to have been thought by the convention preferable to the former, and, I presume, will be most agreeable to the States.

As to the second point, it is impossible, by any argument or comment, to make it clearer than it is in itself. If there are such things as political axioms, the propriety of the judicial power of a government being coextensive with its legislative, may be ranked among the number. The mere necessity of uniformity in the interpretation of the national laws, decides the question. Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed.

Still less need be said in regard to the third point. Controversies between the nation and its members or citizens, can only be properly referred to the national tribunals. Any other plan would be contrary to reason, to precedent, and to decorum.

The fourth point rests on this plain proposition, that the peace of the WHOLE ought not to be left at the disposal of a PART. The Union will undoubtedly be answerable to foreign powers for the conduct of its members. And the responsibility for an injury ought ever to be accompanied with the faculty of preventing it. As the denial or perversion of justice by the sentences of courts, as well as in any other manner, is with reason classed among the just causes of war, it will follow that the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned. This is not less essential to the preservation of the public faith, than to the

security of the public tranquillity. A distinction may perhaps be imagined between cases arising upon treaties and the laws of nations and those which may stand merely on the footing of the municipal law. The former kind may be supposed proper for the federal jurisdiction, the latter for that of the States. But it is at least problematical, whether an unjust sentence against a foreigner, where the subject of controversy was wholly relative to the *lex loci*, would not, if unredressed, be an aggression upon his sovereign, as well as one which violated the stipulations of a treaty or the general law of nations. And a still greater objection to the distinction would result from the immense difficulty, if not impossibility, of a practical discrimination between the cases of one complexion and those of the other. So great a proportion of the cases in which foreigners are parties, involve national questions, that it is by far most safe and most expedient to refer all those in which they are concerned to the national tribunals.

The power of determining causes between two States, between one State and the citizens of another, and between the citizens of different States, is perhaps not less essential to the peace of the Union than that which has been just examined. History gives us a horrid picture of the dissensions and private wars which distracted and desolated Germany prior to the institution of the Imperial Chamber by Maximilian, towards the close of the fifteenth century; and informs us, at the same time, of the vast influence of that institution in appeasing the disorders and establishing the tranquillity of the empire. This was a court invested with authority to decide finally all differences among the members of the Germanic body.

A method of terminating territorial disputes between the States, under the authority of the federal head, was not unattended to, even in the imperfect system by which they have been hitherto held together. But there are many other sources, besides interfering claims of boundary, from which bickerings and animosities may spring up among the members of the Union. To some

of these we have been witnesses in the course of our past experience. It will readily be conjectured that I allude to the fraudulent laws which have been passed in too many of the States. And though the proposed Constitution establishes particular guards against the repetition of those instances which have heretofore made their appearance, yet it is warrantable to apprehend that the spirit which produced them will assume new shapes, that could not be foreseen nor specifically provided against. Whatever practices may have a tendency to disturb the harmony between the States, are proper objects of federal superintendence and control.

It may be esteemed the basis of the Union, that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States." And if it be a just principle that every government OUGHT TO POSSESS THE MEANS OF EXECUTING ITS OWN PROVISIONS BY ITS OWN AUTHORITY, it will follow, that in order to the inviolable maintenance of that equality of privileges and immunities to which the citizens of the Union will be entitled, the national judiciary ought to preside in all cases in which one State or its citizens are opposed to another State or its citizens. To secure the full effect of so fundamental a provision against all evasion and subterfuge, it is necessary that its construction should be committed to that tribunal which, having no local attachments, will be likely to be impartial between the different States and their citizens, and which, owing its official existence to the Union, will never be likely to feel any bias inauspicious to the principles on which it is founded.

The fifth point will demand little animadversion. The most bigoted idolizers of State authority have not thus far shown a disposition to deny the national judiciary the cognizances of maritime causes. These so generally depend on the laws of nations, and so commonly affect the rights of foreigners, that they fall within the considerations which are relative to the public peace. The most important part of them are, by the present Confederation, submitted to federal jurisdiction.

The reasonableness of the agency of the national courts in cases in which the State tribunals cannot be supposed to be impartial, speaks for itself. No man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias. This principle has no inconsiderable weight in designating the federal courts as the proper tribunals for the determination of controversies between different States and their citizens. And it ought to have the same operation in regard to some cases between citizens of the same State. Claims to land under grants of different States, founded upon adverse pretensions of boundary, are of this description. The courts of neither of the granting States could be expected to be unbiased. The laws may have even prejudged the question, and tied the courts down to decisions in favor of the grants of the State to which they belonged. And even where this had not been done, it would be natural that the judges, as men, should feel a strong predilection to the claims of their own government.

Having thus laid down and discussed the principles which ought to regulate the constitution of the federal judiciary, we will proceed to test, by these principles, the particular powers of which, according to the plan of the convention, it is to be composed. It is to comprehend "all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands and grants of different States; and between a State or the citizens thereof and foreign states, citizens, and subjects." This constitutes the entire mass of the judicial authority of the Union. Let us now review it in detail. It is, then, to extend:

First. To all cases in law and equity, ARISING UNDER THE CONSTITUTION and THE LAWS OF THE UNITED STATES. This corresponds with the two first classes of causes, which have been enumerated, as proper for the jurisdiction of the United States. It has been asked, what is meant by "cases arising under the Constitution," in contradiction from those "arising under the laws of the United States"? The difference has been already explained. All the restrictions upon the authority of the State legislatures furnish examples of it. They are not, for instance, to emit paper money; but the interdiction results from the Constitution, and will have no connection with any law of the United States. Should paper money, notwithstanding, be emited, the controversies concerning it would be cases arising under the Constitution and not the laws of the United States, in the ordinary signification of the terms. This may serve as a sample of the whole.

It has also been asked, what need of the word "equity"? What equitable causes can grow out of the Constitution and laws of the United States? There is hardly a subject of litigation between individuals, which may not involve those ingredients of FRAUD, ACCIDENT, TRUST, or HARDSHIP, which would render the matter an object of equitable rather than of legal jurisdiction, as the distinction is known and established in several of the States. It is the peculiar province, for instance, of a court of equity to relieve against what are called hard bargains: these are contracts in which, though there may have been no direct fraud or deceit, sufficient to invalidate them in a court of law, yet there may have been some undue and unconscionable advantage taken of the necessities or misfortunes of one of the parties, which a court of equity would not tolerate. In such cases, where foreigners were concerned on either side, it would be impossible for the federal judicatories to do justice without an equitable as well as a legal jurisdiction. Agreements to convey lands claimed under the grants of different States, may afford another example of the necessity of an equitable jurisdic-

tion in the federal courts. This reasoning may not be so palpable in those States where the formal and technical distinction between LAW and EQUITY is not maintained, as in this State, where it is exemplified by every day's practice.

The judiciary authority of the Union is to extend:

Second. To treaties made, or which shall be made, under the authority of the United States, and to all cases affecting ambassadors, other public ministers, and consuls. These belong to the fourth class of the enumerated cases, as they have an evident connection with the preservation of the national peace.

Third. To cases of admiralty and maritime jurisdiction. These form, altogether, the fifth of the enumerated classes of causes proper for the cognizance of the national courts.

Fourth. To controversies to which the United States shall be a party. These constitute the third of those classes.

Fifth. To controversies between two or more States; between a State and citizens of another State; between citizens of different States. These belong to the fourth of those classes, and partake, in some measure, of the nature of the last.

Sixth. To cases between the citizens of the same State, CLAIMING LANDS UNDER GRANTS OF DIFFERENT STATES. These fall within the last class, and ARE THE ONLY INSTANCES IN WHICH THE PROPOSED CONSTITUTION DIRECTLY CONTEMPLATES THE COGNIZANCE OF DISPUTES BETWEEN THE CITIZENS OF THE SAME STATE.

Seventh. To cases between a State and the citizens thereof, and foreign States, citizens, or subjects. These have been already explained to belong to the fourth of the enumerated classes, and have been shown to be, in a peculiar manner, the proper subjects of the national judicature.

From this review of the particular powers of the federal judiciary, as marked out in the Constitution, it appears that they are all conformable to the principles which ought

to have governed the structure of that department, and which were necessary to the perfection of the system. If some partial inconviences should appear to be connected with the incorporation of any of them into the plan, it ought to be recollected that the national legislature will have ample authority to make such EXCEPTIONS, and to prescribe such regulations as will be calculated to obviate or remove these inconveniences. The possibility of particular mischiefs can never be viewed, by a well-informed mind, as a solid objection to a general principle, which is calculated to avoid general mischiefs and to obtain general advantages. PUBLIUS.

From McLean's *Edition, New York*, M.DCC.LXXXVIII

THE FEDERALIST. No. LXXXI.

(HAMILTON.)

To the People of the State of New York:

Let us now return to the partition of the judiciary authority between different courts, and their relations to each other,

"The judicial power of the United States is" (by the plan of the convention) "to be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish."*

That there ought to be one court of supreme and final jurisdiction, is a proposition which is not likely to be contested. The reasons for it have been assigned in another place, and are too obvious to need repetition. The only question that seems to have been raised concerning it, is, whether it ought to be a distinct body or a branch of the legislature. The same contradiction is observable in regard to this matter which has been remarked in several other cases. The very men who object to the Senate as a court of impeachments, on the ground of an improper intermixture of powers, advocate, by implication at least, the propriety of vesting the ultimate decision of all causes, in the whole or in a part of the legislative body.

The arguments, or rather suggestions, upon which this charge is founded, are to this effect: "The authority of the proposed Supreme Court of the United States, which is to be a separate and independent body, will be superior to that of the legislature. The power of construing the laws according to the spirit of the Constitution, will enable that court to mould them into whatever shape it may

* Article 3, sec. 1.

think proper; especially as its decisions will not be in any manner subject to the revision or correction of the legislative body. This is as unprecedented as it is dangerous. In Britain, the judical power, in the last resort, resides in the House of Lords, which is a branch of the legislature; and this part of the British government has been imitated in the State constitutions in general. The Parliament of Great Britain, and the legislatures of the several States, can at any time rectify, by law, the exceptionable decisions of their respective courts. But the errors and usurpations of the Supreme Court of the United States will be uncontrollable and remediless." This, upon examination, will be found to be made up altogether of false reasoning upon misconceived fact.

In the first place, there is not a syllable in the plan under consideration which DIRECTLY empowers the national courts to construe the laws according to the spirit of the Constitution, or which gives them any greater latitude in this respect than may be claimed by the courts of every State. I admit, however, that the Constitution ought to be the standard of construction for the laws, and that wherever there is an evident opposition, the laws ought to give place to the Constitution. But this doctrine is not deducible from any circumstance peculiar to the plan of the convention, but from the general theory of a limited Constitution; and as far as it is true, is equally applicable to most, if not to all the State governments. There can be no objection, therefore, on this account, to the federal judicature which will not lie against the local judicatures in general, and which will not serve to condemn every constitution that attempts to set bounds to legislative discretion.

But perhaps the force of the objection may be thought to consist in the particular organization of the Supreme Court; in its being composed of a distinct body of magistrates, instead of being one of the branches of the legislature, as in the government of Great Britain and that of the State. To insist upon this point, the authors of the objection must renounce the meaning they have

labored to annex to the celebrated maxim, requiring a separation of the departments of power. It shall, nevertheless, be conceded to them, agreeably to the interpretation given to that maxim in the course of these papers, that it is not violated by vesting the ultimate power of judging in a PART of the legislative body. But though this be not an absolute violation of that excellent rule, yet it verges so nearly upon it, as on this account alone to be less eligible than the mode preferred by the convention. From a body which had even a partial agency in passing bad laws, we could rarely expect a disposition to temper and moderate them in the application. The same spirit which had operated in making them, would be too apt in interpreting them; still less could it be expected that men who had infringed the Constitution in the character of legislators, would be disposed to repair the breach in the character of judges. Nor is this all. Every reason which recommends the tenure of good behavior for judicial offices, militates against placing the judiciary power, in the last resort, in a body composed of men chosen for a limited period. There is an absurdity in referring the determination of causes, in the first instance, to judges of permanent standing; in the last, to those of a temporary and mutable constitution. And there is a still greater absurdity in subjecting the decisions of men, selected for their knowledge of the laws, acquired by long and laborious study, to the revision and control of men who, for want of the same advantage, cannot but be deficient in that knowledge. The members of the legislature will rarely be chosen with a view to those qualifications which fit men for the stations of judges; and as, on this account, there will be great reason to apprehend all the ill consequences of defective information, so, on account of the natural propensity of such bodies to party divisions, there will be no less reason to fear that the pestilential breath of faction may poison the fountains of justice. The habit of being continually marshalled on opposite sides will be too apt to stifle the voice both of law and of equity.

These considerations teach us to applaud the wisdom of those States who have committed the judicial power, in the last resort, not to a part of the legislature, but to distinct and independent bodies of men. Contrary to the supposition of those who have represented the plan of the convention, in this respect, as novel and unprecedented, it is but a copy of the constitutions of New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia; and the preference which has been given to those models is highly to be commended.

It is not true, in the second place, that the Parliament of Great Britain, or the legislatures of the particular States, can rectify the exceptionable decisions of their respective courts, in any other sense than might be done by a future legislature of the United States. The theory, neither of the British, nor the State constitutions, authorizes the revisal of a judicial sentence by a legislative act. Nor is there any thing in the proposed Constitution, more than in either of them, by which it is forbidden. In the former, as well as in the latter, the impropriety of the thing, on the general principles of law and reason, is the sole obstacle. A legislature, without exceeding its province, cannot reverse a determination once made in a particular case; though it may prescribe a new rule for future cases. This is the principle, and it applies in all its consequences, exactly in the same manner and extent, to the State governments, as to the national government now under consideration. Not the least difference can be pointed out in any view of the subject.

It may in the last place be observed that the supposed danger of judiciary encroachments on the legislative authority, which has been upon many occasions reiterated, is in reality a phantom. Particular misconstructions and contraventions of the will of the legislature may now and then happen; but they can never be so extensive as to amount to an inconvenience, or in any sensible degree to affect the order of the political system. This may be inferred with certainty, from the general nature of the

judicial power, from the objects to which it relates, from the manner in which it is exercised, from its comparative weakness, and from its total incapacity to support its usurpations by force. And the inference is greatly fortified by the consideration of the important constitutional check which the power of instituting impeachments in one part of the legislative body, and of determining upon them in the other, would give to that body upon the members of the judicial department. This is alone a complete security. There never can be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body intrusted with it, while this body was possessed of the means of punishing their presumption, by degrading them from their stations. While this ought to remove all apprehensions on the subject, it affords, at the same time, a cogent argument for constituting the Senate a court for the trial of impeachments.

Having now examined, and, I trust, removed the objections to the distinct and independent organization of the Supreme Court, I proceed to consider the propriety of the power of constituting inferior courts,* and the relations which will subsist between these and the former.

The power of constituting inferior courts is evidently calculated to obviate the necessity of having recourse to the Supreme Court in every case of federal cognizance. It is intended to enable the national government to institute or AUTHORIZE, in each State or district of the United States, a tribunal competent to the determination of matters of national jurisdiction within its limits.

But why, it is asked, might not the same purpose have been accomplished by the instrumentality of the State courts? This admits of different answers. Though the

* This power has been absurdly represented as intended to abolish all the county courts in the several States, which are commonly called inferior courts. But the expressions of the Constitution are, to constitute "tribunals INFERIOR TO THE SUPREME COURT"; and the evident design of the provision is to enable the institution of local courts, subordinate to the Supreme, either in States or larger districts. It is ridiculous to imagine that county courts were in contemplation.

fitness and competency of those courts should be allowed in the utmost latitude, yet the substance of the power in question may still be regarded as a necessary part of the plan, if it were only to empower the national legislature to commit to them the cognizance of causes arising out of the national Constitution. To confer the power of determining such causes upon the existing courts of the several States, would perhaps be as much "to constitute tribunals," as to create new courts with the like power. But ought not a more direct and explicit provision to have been made in favor of the State courts? There are, in my opinion, substantial reasons against such a provision: the most discerning cannot foresee how far the prevalency of a local spirit may be found to disqualify the local tribunals for the jurisdiction of national causes; whilst every man may discover, that courts constituted like those of some of the States would be improper channels of the judicial authority of the Union. State judges, holding their offices during pleasure, or from year to year, will be too little independent to be relied upon for an inflexible execution of the national laws. And if there was a necessity for confiding the original cognizance of causes arising under those laws to them there would be a correspondent necessity for leaving the door of appeal as wide as possible. In proportion to the grounds of confidence in, or distrust of, the subordinate tribunals, ought to be the facility or difficulty of appeals. And well satisfied as I am of the propriety of the appellate jurisdiction, in the several classes of causes to which it is extended by the plan of the convention. I should consider every thing calculated to give, in practice, an UNRESTRAINED COURSE to appeals, as a source of public and private inconvenience.

I am not sure, but that it will be found highly expedient and useful, to divide the United States into four or five or half a dozen districts; and to institute a federal court in each district, in lieu of one in every State. The judges of these courts, with the aid of the State judges, may hold circuits for the trial of causes in the several parts of the respective districts. Justice through them may be

administered with ease and despatch; and appeals may be safely circumscribed within a narrow compass. This plan appears to me at present the most eligible of any that could be adopted; and in order to it, it is necessary that the power of constituting inferior courts should exist in the full extent in which it is to be found in the proposed Constitution.

These reasons seem sufficient to satisfy a candid mind, that the want of such a power would have been a great defect in the plan. Let us now examine in what manner the judicial authority is to be distributed between the supreme and the inferior courts of the Union.

The Supreme Court is to be invested with original jurisdiction, only "in cases affecting ambassadors, other public ministers, and consuls, and those in which A STATE shall be a party." Public ministers of every class are the immediate representatives of their sovereigns. All questions in which they are concerned are so directly connected with the public peace, that, as well for the preservation of this, as out of respect to the sovereignties they represent, it is both expedient and proper that such questions should be submitted in the first instance to the highest judicatory of the nation. Though consuls have not in strictness a diplomatic character, yet as they are the public agents of the nations to which they belong, the same observation is in a great measure applicable to them. In cases in which a State might happen to be a party, it would ill suit its dignity to be turned over to an inferior tribunal.

Though it may rather be a digression from the immediate subject of this paper, I shall take occasion to mention here a supposition which has excited some alarm upon very mistaken grounds. It has been suggested that an assignment of the public securities of one State to the citizens of another, would enable them to prosecute that State in the federal courts for the amount of those securities; a suggestion which the following considerations prove to be without foundation.

It is inherent in the nature of sovereignty not to be

amenable to the suit of an individual WITHOUT ITS CONSENT. This is the general sense, and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union. Unless, therefore, there is a surrender of this immunity in the plan of the convention, it will remain with the States, and the danger intimated must be merely ideal. The circumstances which are necessary to produce an alienation of State sovereignty were discussed in considering the article of taxation, and need not be repeated here. A recurrence to the principles there established will satisfy us, that there is no color to pretend that the State governments would, by the adoption of that plan, be divested of the privilege of paying their own debts in their own way, free from every constraint but that which flows from the obligations of good faith. The contracts between a nation and individuals are only binding on the conscience of the sovereign, and have no pretensions to a compulsive force. They confer no right of action, independent of the sovereign will. To what purpose would it be to authorize suits against States for the debts they owe? How could recoveries be enforced? It is evident, it could not be done without waging war against the contracting State; and to ascribe to the federal courts, by mere implication, and in destruction of a pre-existing right of the State governments, a power which would involve such a consequence, would be altogether forced and unwarrantable.

Let us resume the train of our observations. We have seen that the original jurisdiction of the Supreme Court would be confined to two classes of causes, and those of a nature rarely to occur. In all other cases of federal cognizance, the original jurisdiction would appertain to the inferior tribunals; and the Supreme Court would have nothing more than an appellate jurisdiction, "with such EXCEPTIONS and under such REGULATIONS as the Congress shall make."

The propriety of this appellate jurisdiction has been scarcely called in question in regard to matters of law; but

the clamors have been loud against it as applied to matters of fact. Some well-intentioned men in this State, deriving their notions from the language and forms which obtain in our courts, have been induced to consider it as an implied supersedure of the trial by jury, in favor of the civil-law mode of trial, which prevails in our courts of admiralty, probate, and chancery. A technical sense has been affixed to the term "appellate," which, in our law parlance, is commonly used in reference to appeals in the course of the civil law. But if I am not misinformed, the same meaning would not be given to it in any part of New England. There an appeal from one jury to another, is familiar both in language and practice, and is even a matter of course, until there have been two verdicts on one side. The word "appellate," therefore, will not be understood in the same sense in New England as in New York, which shows the impropriety of a technical interpretation derived from the jurisprudence of any particular State. The expression, taken in the abstract, denotes nothing more than the power of one tribunal to review the proceedings of another, either as to the law or fact, or both. The mode of doing it may depend on ancient custom or legislative provision (in a new government it must depend on the latter), and may be with or without the aid of a jury, as may be judged advisable. If, therefore, the re-examination of a fact once determined by a jury, should in any case be admitted under the proposed Constitution, it may be so regulated as to be done by a second jury, either by remanding the cause to the court below for a second trial of the fact, or by directing an issue immediately out of the Supreme Court.

But it does not follow that the re-examination of a fact once ascertained by a jury, will be permitted in the Supreme Court. Why may not it be said, with the strictest propriety, when a writ of error is brought from an inferior to a superior court of law in this State, that the latter has jurisdiction of the fact as well as the law? It is true it cannot institute a new inquiry concerning the fact, but it takes cognizance of it as it appears upon the

record, and pronounces the law arising upon it.* This is jurisdiction of both fact and law; nor is it even possible to separate them. Though the common-law courts of this State ascertain disputed facts by a jury, yet they unquestionably have jurisdiction of both fact and law; and accordingly when the former is agreed in the pleadings, they have no recourse to a jury, but proceed at once to judgment. I contend, therefore, on this ground, that the expressions, "appellate jurisdiction, both as to law and fact," do not necessarily imply a re-examination in the Supreme Court of facts decided by juries in the inferior courts.

The following train of ideas may well be imagined to have influenced the convention, in relation to this particular provision. The appellate jurisdiction of the Supreme Court (it may have been argued) will extend to causes determinable in different modes, some in the course of the COMMON LAW, others in the course of the CIVIL LAW. In the former, the revision of the law only will be, generally speaking, the proper province of the Supreme Court; in the latter, the re-examination of the fact is agreeable to usage, and in some cases, of which prize causes are an example, might be essential to the preservation of the public peace. It is therefore necessary that the appellate jurisdiction should, in certain cases, extend in the broadest sense to matters of fact. It will not answer to make an express exception of cases which shall have been originally tried by a jury, because in the courts of some of the States ALL CAUSES are tried in this mode†; and such an exception would preclude the revision of matters of fact, as well where it might be proper, as where it might be improper. To avoid all inconveniencies, it will be safest to declare generally, that the Supreme Court shall possess appellate jurisdiction both as to law and FACT, and that this juris-

*This word is composed of JUS and DICTIO, *juris dictio*, or a speaking and pronouncing of the law.

†I hold that the States will have concurrent jurisdiction with the subordinate federal judicatories, in many cases of federal cognizance, as will be explained in my next paper.

diction shall be subject to such EXCEPTIONS and regulations as the national legislature may prescribe. This will enable the government to modify it in such a manner as will best answer the ends of public justice and security.

This view of the matter, at any rate puts it out of all doubt that the supposed ABOLITION of the trial by jury, by the operation of this provision, is fallacious and untrue. The legislature of the United States would certainly have full power to provide, that in appeals to the Supreme Court there should be no re-examination of facts where they had been tried in the original causes by juries. This would certainly be an authorized exception; but if, for the reason already intimated, it should be thought too extensive, it might be qualified with a limitation to such causes only as are determinable at common law in that mode of trial.

The amount of the observations hitherto made on the authority of the judicial department is this: that it has been carefully restricted to those causes which are manifestly proper for the cognizance of the national judicature; that in the partition of this authority a very small portion of original jurisdiction has been preserved to the Supreme Court, and the rest consigned to the subordinate tribunals; that the Supreme Court will possess an appellate jurisdiction, both as to law and fact, in all the cases referred to them, both subject to any EXCEPTIONS and REGULATIONS which may be thought advisable; that this appellate jurisdiction does, in no case, ABOLISH the trial by jury; and that an ordinary degree of prudence and integrity in the national councils will insure us solid advantages from the establishment of the proposed judiciary, without exposing us to any of the inconveniences which have been predicted from that source.

PUBLIUS.

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THE FEDERALIST. No. LXXXII.

(HAMILTON.)

To the People of the State of New York:

The erection of a new government, whatever care or wisdom may distinguish the work, cannot fail to originate questions of intricacy and nicety; and these may, in a particular manner, be expected to flow from the establishment of a constitution founded upon the total or partial incorporation of a number of distinct sovereignties. 'T is time only that can mature and perfect so compound a system, can liquidate the meaning of all the parts, and can adjust them to each other in a harmonious and consistent WHOLE.

Such questions, accordingly, have arisen upon the plan proposed by the convention, and particularly concerning the judiciary department. The principal of these respect the situation of the State courts in regard to those causes which are to be submitted to federal jurisdiction. Is this to be exclusive, or are those courts to possess a concurrent jurisdiction? If the latter, in what relation will they stand to the national tribunals? These are inquiries which we meet with in the mouths of men of sense, and which are certainly entitled to attention,

The principles established in a former paper* teach us that the States will retain all PRE-EXISTING authorities which may not be exclusively delegated to the federal head; and that this exclusive delegation can only exist in one of three cases: where an exclusive authority is, in express terms, granted to the Union; or where a particular authority is granted to the Union, and the exercise of a like authority is prohibited to the States; or

*No. XXXI.

where an authority is granted to the Union, with which a similar authority in the States would be utterly incompatible. Though these principles may not apply with the same force to the judiciary as to the legislative power, yet I am inclined to think that they are, in the main, just with respect to the former, as well as the latter. And under this impression, I shall lay it down as a rule, that the State courts will RETAIN the jurisdiction they now have, unless it appears to be taken away in one of the enumerated modes.

The only thing in the proposed Constitution, which wears the appearance of confining the causes of federal cognizance to the federal courts, is contained in this passage:—"The JUDICIAL POWER of the United States SHALL BE VESTED in one Supreme Court, and in SUCH inferior courts as the Congress shall from time to time ordain and establish." This might either be construed to signify, that the supreme and subordinate courts of the Union should alone have the power of deciding those causes to which their authority is to extend; or simply to denote, that the organs of the national judiciary should be one Supreme Court, and as many subordinate courts as Congress should think proper to appoint; or in other words, that the United States should exercise the judicial power with which they are to be invested, through one supreme tribunal, and a certain number of inferior ones, to be instituted by them. The first excludes, the last admits, the concurrent jurisdiction of the State tribunals; and as the first would amount to an alienation of State power by implication, the last appears to me the most natural and the most defensible construction.

But this doctrine of concurrent jurisdiction is only clearly applicable to those descriptions of causes of which the State courts have previous cognizance. It is not equally evident in relation to cases which may grow out of, and be PECULIAR to, the Constitution to be established; for not to allow the State courts a right of jurisdiction in such cases, can hardly be considered as the abridgment of a

pre-existing authority. I mean not therefore to contend that the United States, in the course of legislation upon the objects intrusted to their direction, may not commit the decision of causes arising upon a particular regulation to the federal courts solely, if such a measure should be deemed expedient; but I hold that the State courts will be divested of no part of their primitive jurisdiction, further than may relate to an appeal; and I am even of opinion that in every case in which they were not expressly excluded by the future acts of the national legislature, they will of course take cognizance of the causes to which those acts may give birth. This I infer from the nature of judiciary power, and from the general genius of the system. The judiciary power of every government looks beyond its own local or municipal laws, and in civil cases lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe. Those of Japan, not less than of New York, may furnish the objects of legal discussion to our courts. When in addition to this we consider the State governments and the national governments, as they truly are, in the light of kindred systems, and as parts of ONE WHOLE, the inference seems to be conclusive, that the State courts would have a concurrent jurisdiction in all cases arising under the laws of the Union, where it was not expressly prohibited.

Here another question occurs: What relation would subsist between the national and State courts in these instances of concurrent jurisdiction? I answer, that an appeal would certainly lie from the latter, to the Supreme Court of the United States. The Constitution in direct terms gives an appellate jurisdiction to the Supreme Court in all the enumerated cases of federal cognizance in which it is not to have an original one, without a single expression to confine its operation to the inferior federal courts. The objects of appeal, not the tribunals from which it is to be made, are alone contemplated. From this circumstance, and from the reason of the thing, it ought to be construed

to extend to the State tribunals. Either this must be the case, or the local courts must be excluded from a concurrent jurisdiction in matters of national concern, else the judiciary authority of the Union may be eluded at the pleasure of every plaintiff or prosecutor. Neither of these consequences ought, without evident necessity, to be involved; the latter would be entirely inadmissible, as it would defeat some of the most important and avowed purposes of the proposed government, and would essentially embarrass its measures. Nor do I perceive any foundation for such a supposition. Agreeably to the remark already made, the national and State systems are to be regarded as ONE WHOLE. The courts of the latter will of course be natural auxiliaries to the execution of the laws of the Union, and an appeal from them will as naturally lie to that tribunal which is destined to unite and assimilate the principles of national justice and the rules of national decisions. The evident aim of the plan of the convention is, that all the causes of the specified classes shall, for weighty public reasons, receive their original or final determination in the courts of the Union. To confine, therefore, the general expressions giving appellate jurisdiction to the Supreme Court, to appeals from the subordinate federal courts, instead of allowing their extension to the State courts, would be to abridge the latitude of the terms, in subversion of the intent, contrary to every sound rule of interpretation.

But could an appeal be made to lie from the State courts to the subordinate federal judicatories? This is another of the questions which have been raised, and of greater difficulty than the former. The following considerations countenance the affirmative. The plan of the convention, in the first place, authorizes the national legislature "to constitute tribunals inferior to the Supreme Court."* It declares, in the next place, that "the JUDICIAL POWER of the United States SHALL BE VESTED in one Supreme Court, and in such inferior courts as Congress shall ordain and establish"; and it then proceeds to

* Sec. 8th. art. 1st.

enumerate the cases to which this judicial power shall extend. It afterwards divides the jurisdiction of the Supreme Court into original and appellate, but gives no definition of that of the subordinate courts. The only outlines described for them, are that they shall be "inferior to the Supreme Court," and that they shall not exceed the specified limits of the federal judiciary. Whether their authority shall be original or appellate, or both, is not declared. All this seems to be left to the discretion of the legislature. And this being the case, I perceive at present no impediment to the establishment of an appeal from the State courts to the subordinate national tribunals; and many advantages attending the power of doing it may be imagined. It would diminish the motives to the multiplication of federal courts, and would admit of arrangements calculated to contract the appellate jurisdiction of the Supreme Court. The State tribunals may then be left with a more entire charge of federal causes; and appeals, in most cases in which they may be deemed proper, instead of being carried to the Supreme Court, may be made to lie from the State courts to district courts of the Union. PUBLIUS.

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THE FEDERALIST. No. LXXXIII.

(HAMILTON.)

To the People of the State of New York:

The objection to the plan of the convention, which has met with most success in this State, and perhaps in several of the other States, is that relative to the want of a constitutional provision for the trial by jury in civil cases. The disingenuous form in which this objection is usually stated has been repeatedly adverted to and exposed, but continues to be pursued in all the conversations and writings of the opponents of the plan. The mere silence of the Constitution in regard to civil causes, is represented as an abolition of the trial by jury, and the declamations to which it has afforded a pretext are artfully calculated to induce a persuasion that this pretended abolition is complete and universal, extending not only to every species of civil, but even to criminal causes. To argue with respect to the latter would, however, be as vain and fruitless as to attempt the serious proof of the existence of matter, or to demonstrate any of those propositions which, by their own internal evidence, force conviction, when expressed in language adapted to convey their meaning.

With regard to civil causes, subtleties almost too contemptible for refutation have been employed to countenance the surmise that a thing which is only not provided for, is entirely abolished. Every man of discernment must at once perceive the wide difference between silence and abolition. But as the inventors of this fallacy have attempted to support it by certain legal maxims of interpretation, which they have perverted from

their true meaning, it may not be wholly useless to explore the ground they have taken.

The maxims on which they rely are of this nature: "A specification of particulars is an exclusion of generals"; or, "The expression of one thing is the exclusion of another." Hence, say they, as the Constitution has established the trial by jury in criminal cases, and is silent in respect to civil, this silence is an implied prohibition of trial by jury in regard to the latter.

The rules of legal interpretation are rules of COMMON-SENSE, adopted by the courts in the construction of the laws. The true test, therefore, of a just application of them is its conformity to the source from which they are derived. This being the case, let me ask if it is consistent with common-sense to suppose that a provision obliging the legislative power to commit the trial of criminal causes to juries, is a privation of its right to authorize or permit that mode of trial in other cases? Is it natural to suppose, that a command to do one thing is a prohibition to the doing of another, which there was a previous power to do, and which is not incompatible with the thing commanded to be done? If such a supposition would be unnatural and unreasonable, it cannot be rational to maintain that an injunction of the trial by jury in certain cases is an interdiction of it in others.

A power to constitute courts is a power to prescribe the mode of trial; and consequently, if nothing was said in the Constitution on the subject of juries, the legislature would be at liberty either to adopt that institution or to let it alone. This discretion, in regard to criminal causes, is abridged by the express injunction of trial by jury in all such cases; but it is, of course, left at large in relation to civil causes, there being a total silence on this head. The specification of an obligation to try all criminal causes in a particular mode, excludes indeed the obligation or necessity of employing the same mode in civil causes, but does not abridge THE POWER of the legislature to exercise that mode if it should be thought proper. The pretense, therefore, that

the national legislature would not be at full liberty to submit all the civil causes of federal cognizance to the determination of juries, is a pretense destitute of all just foundation.

From these observations this conclusion results: that the trial by jury in civil cases would not be abolished; and that the use attempted to be made of the maxims which have been quoted, is contrary to reason and common-sense, and therefore not admissible. Even if these maxims had a precise technical sense, corresponding with the idea of those who employ them upon the present occasion, which, however, is not the case, they would still be inapplicable to a constitution of government. In relation to such a subject, the natural and obvious sense of its provisions, apart from any technical rules, is the true criterion of construction.

Having now seen that the maxims relied upon will not bear the use made of them, let us endeavor to ascertain their proper use and true meaning. This will be best done by examples. The plan of the convention declares that the power of Congress, or, in other words, of the NATIONAL LEGISLATURE, shall extend to certain enumerated cases. This specification of particulars evidently excludes all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd, as well as useless, if a general authority was intended.

In like manner the judicial authority of the federal judicatures is declared by the Constitution to comprehend certain cases particularly specified. The expression of those cases marks the precise limits, beyond which the federal courts cannot extend their jurisdiction, because the objects of their cognizance being enumerated, the specification would be nugatory if it did not exclude all ideas of more extensive authority.

These examples are sufficient to elucidate the maxims which have been mentioned, and to designate the manner in which they should be used. But that there may be no misapprehensions upon this subject, I shall add one case

more, to demonstrate the proper use of these maxims, and the abuse which has been made of them.

Let us suppose that by the laws of this State a married woman was incapable of conveying her estate, and that the legislature, considering this as an evil, should enact that she might dispose of her property by deed executed in the presence of a magistrate. In such a case there can be no doubt but the specification would amount to an exclusion of any other mode of conveyance, because the woman having no previous power to alienate her property, the specification determines the particular mode which she is, for that purpose, to avail herself of. But let us further suppose that in a subsequent part of the same act it should be declared that no woman should dispose of any estate of a determinate value without the consent of three of her nearest relations, signified by their signing the deed; could it be inferred from this regulation that a married woman might not procure the approbation of her relations to a deed for conveying property of inferior value? The position is too absurd to merit a refutation, and yet this is precisely the position which those must establish who contend that the trial by juries in civil cases is abolished, because it is expressly provided for in cases of a criminal nature.

From these observations it must appear unquestionably true, that trial by jury is in no case abolished by the proposed Constitution, and it is equally true, that in those controversies between individuals in which the great body of the people are likely to be interested, that institution will remain precisely in the same situation in which it is placed by the State constitutions, and will be in no degree altered or influenced by the adoption of the plan under consideration. The foundation of this assertion is, that the national judiciary will have no cognizance of them, and of course they will remain determinable as heretofore by the State courts only, and in the manner which the State constitutions and laws prescribe. All land causes, except where claims under the grants of different States come into question, and all

other controversies between the citizens of the same State, unless where they depend upon positive violations of the articles of union, by acts of the State legislatures, will belong exclusively to the jurisdiction of the State tribunals. Add to this, that admiralty causes, and almost all those which are of equity jurisdiction, are determinable under our own government without the intervention of a jury, and the inference from the whole will be, that this institution, as it exists with us at present, cannot possibly be affected to any great extent by the proposed alteration in our system of government.

The friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury; or if there is any difference between them it consists in this: the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government. For my own part, the more the operation of the institution has fallen under my observation, the more reason I have discovered for holding it in high estimation; and it would be altogether superfluous to examine to what extent it deserves to be esteemed useful or essential in a representative republic, or how much more merit it may be entitled to, as a defense against the oppressions of an hereditary monarch, than as a barrier to the tyranny of popular magistrates in a popular government. Discussions of this kind would be more curious than beneficial, as all are satisfied of the utility of the institution, and of its friendly aspect to liberty. But I must acknowledge that I cannot readily discern the inseparable connection between the existence of liberty, and the trial by jury in civil cases. Arbitrary impeachments, arbitrary methods of prosecuting pretended offenses, and arbitrary punishments upon arbitrary convictions, have ever appeared to me to be the great engines of judicial despotism; and these have all relation to criminal proceedings. The trial by jury in criminal cases, aided by the *habeas-corpus* act, seems therefore to be alone concerned in the question. And both of these are

provided for, in the most ample manner, in the plan of the convention.

It has been observed, that trial by jury is a safeguard against an oppressive exercise of the power of taxation. This observation deserves to be canvassed.

It is evident that it can have no influence upon the legislature, in regard to the AMOUNT of taxes to be laid, to the OBJECTS upon which they are to be imposed, or to the RULE by which they are to be apportioned. If it can have any influence, therefore, it must be upon the mode of collection, and the conduct of the officers intrusted with the execution of the revenue laws.

As to the mode of collection in this State, under our own Constitution, the trial by jury is in most cases out of use. The taxes are usually levied by the more summary proceeding of distress and sale, as in cases of rent. And it is acknowledged on all hands, that this is essential to the efficacy of the revenue laws. The dilatory course of a trial at law to recover the taxes imposed on individuals, would neither suit the exigencies of the public nor promote the convenience of the citizens. It would often occasion an accumulation of costs, more burdensome than the original sum of the tax to be levied.

And as to the conduct of the officers of the revenue, the provision in favor of trial by jury in criminal cases, will afford the security aimed at. Wilful abuses of a public authority, to the oppression of the subject, and every species of official extortion, are offenses against the government, for which the persons who commit them may be indicted and punished according to the circumstances of the case.

The excellence of the trial by jury in civil cases appears to depend on circumstances foreign to the preservation of liberty. The strongest argument in its favor is, that it is a security against corruption. As there is always more time and better opportunity to tamper with a standing body of magistrates than with a jury summoned for the occasion, there is room to suppose that a corrupt influence would more easily find its way to the former than to the latter.

The force of this consideration is, however, diminished by others. The sheriff, who is the summoner of ordinary juries, and the clerks of courts, who have the nomination of special juries, are themselves standing officers, and, acting individually, may be supposed more accessible to the touch of corruption than the judges, who are a collective body. It is not difficult to see, that it would be in the power of those officers to select jurors who would serve the purpose of the party as well as a corrupted bench. In the next place, it may fairly be supposed, that there would be less difficulty in gaining some of the jurors promiscuously taken from the public mass, than in gaining men who had been chosen by the government for their probity and good character. But making every deduction for these considerations, the trial by jury must still be a valuable check upon corruption. It greatly multiplies the impediments to its success. As matters now stand, it would be necessary to corrupt both court and jury; for where the jury have gone evidently wrong, the court will generally grant a new trial, and it would be in most cases of little use to practice upon the jury, unless the court could be likewise gained. Here then is a double security; and it will readily be perceived that this complicated agency tends to preserve the purity of both institutions. By increasing the obstacles to success, it discourages attempts to seduce the integrity of either. The temptations to prostitution which the judges might have to surmount, must certainly be much fewer, while the co-operation of a jury is necessary, than they might be, if they had themselves the exclusive determination of all causes.

Notwithstanding, therefore, the doubts I have expressed, as to the essentiality of trial by jury in civil cases to liberty, I admit that it is in most cases, under proper regulations, an excellent method of determining questions of property; and that on this account alone it would be entitled to a constitutional provision in its favor if it were possible to fix the limits within which it ought to be comprehended. There is, however, in all cases, great difficulty in this; and men not blinded by enthusi-

asm must be sensible that in a federal government, which is a composition of societies whose ideas and institutions in relation to the matter materially vary from each other, that difficulty must be not a little augmented. For my own part, at every new view I take of the subject, I become more convinced of the reality of the obstacles which, we are authoritatively informed, prevented the insertion of a provision on this head in the plan of the convention.

The great difference between the limits of the jury trial in different States is not generally understood; and as it must have considerable influence on the sentence we ought to pass upon the omission complained of in regard to this point, an explanation of it is necessary. In this State, our judicial establishments resemble, more nearly than in any other, those of Great Britain. We have courts of common law, courts of probates (analogous in certain matters to the spiritual courts in England), a court of admiralty, and a court of chancery. In the courts of common law only, the trial by jury prevails, and this with some exceptions. In all the others a single judge presides, and proceeds in general either according to the course of the canon or civil law, without the aid of a jury.* In New Jersey, there is a court of chancery which proceeds like ours, but neither courts of admiralty nor of probates, in the sense in which these last are established with us. In that State the courts of common law have the cognizance of those causes which with us are determinable in the courts of admiralty and of probates, and of course the jury trial is more extensive in New Jersey than in New York. In Pennsylvania, this is perhaps still more the case, for there is no court of chancery in that State, and its common-law courts have equity jurisdiction. It has a court of admiralty, but none of probates, at least on the plan of ours. Delaware has

*It has been erroneously insinuated, with regard to the court of chancery, that this court generally tries disputed facts by a jury. The truth is, that references to a jury in that court rarely happen, and are in no case necessary but where the validity of a devise of land comes into question.

in these respects imitated Pennsylvania. Maryland approaches more nearly to New York, as does also Virginia, except that the latter has a plurality of chancellors. North Carolina bears most affinity to Pennsylvania; South Carolina to Virginia. I believe, however, that in some of those States which have distinct courts of admiralty, the causes depending in them are triable by juries. In Georgia there are none but common-law courts, and an appeal of course lies from the verdict of one jury to another, which is called a special jury, and for which a particular mode of appointment is marked out. In Connecticut, they have no distinct courts either of chancery or of admiralty, and their courts of probates have no jurisdiction of causes. Their common-law courts have admiralty and, to a certain extent, equity jurisdiction. In cases of importance, their General Assembly is the only court of chancery. In Connecticut, therefore, the trial by jury extends in PRACTICE further than in any other State yet mentioned. Rhode Island is, I believe, in this particular, pretty much in the situation of Connecticut. Massachusetts and New Hampshire, in regard to the blending of law, equity, and admiralty jurisdictions, are in a similar predicament. In the four Eastern States, the trial by jury not only stands upon a broader foundation than in the other States, but it is attended with a peculiarity unknown, in its full extent, to any of them. There is an appeal OF COURSE from one jury to another, till there have been two verdicts out of three on one side.

From this sketch it appears that there is a material diversity, as well in the modification as in the extent of the institution of trial by jury in civil cases, in the several States; and from this fact these obvious reflections flow: first, that no general rule could have been fixed upon by the convention which would have corresponded with the circumstances of all the States; and secondly, that more or at least as much might have been hazarded by taking the system of any one State for a standard, as by omitting a provision altogether and leaving the matter, as has been done, to legislative regulation.

The propositions which have been made for supplying the omission have rather served to illustrate than to obviate the difficulty of the thing. The minority of Pennsylvania have proposed this mode of expression for the purpose —"Trial by jury shall be as heretofore"—and this I maintain would be senseless and nugatory. The United States, in their united or collective capacity, are the OBJECT to which all general provisions in the Constitution must necessarily be construed to refer. Now it is evident that though trial by jury, with various limitations, is known in each State individually, yet in the United States, AS SUCH, it is at this time altogether unknown, because the present federal government has no judiciary power whatever; and consequently there is no proper antecedent or previous establishment to which the term HERETOFORE could relate. It would therefore be destitute of a precise meaning, and inoperative from its uncertainty.

As, on the one hand, the form of the provision would not fulfil the intent of its proposers, so, on the other, if I apprehend that intent rightly, it would be in itself inexpedient. I presume it to be, that causes in the federal courts should be tried by jury, if, in the State where the courts sat, that mode of trial would obtain in a similar case in the State courts; that is to say, admiralty causes should be tried in Connecticut by a jury, in New York without one. The capricious operation of so dissimilar a method of trial in the same cases, under the same government, is of itself sufficient to indispose every well-regulated judgment towards it. Whether the cause should be tried with or without a jury, would depend, in a great number of cases, on the accidental situation of the court and parties.

But this is not, in my estimation, the greatest objection. I feel a deep and deliberate conviction that there are many cases in which the trial by jury is an ineligible one. I think it so particularly in cases which concern the public peace with foreign nations—that is, in most cases where the question turns wholly on the laws of nations. Of this nature, among others, are all prize causes. Juries cannot

be supposed competent to investigations that require a thorough knowledge of the laws and usages of nations; and they will sometimes be under the influence of impressions which will not suffer them to pay sufficient regard to those considerations of public policy which ought to guide their inquiries. There would of course be always danger that the rights of other nations might be infringed by their decisions, so as to afford occasions of reprisal and war. Though the proper province of juries be to determine matters of fact, yet in most cases legal consequences are complicated with fact in such a manner as to render a separation impracticable.

It will add great weight to this remark, in relation to prize causes, to mention that the method of determining them has been thought worthy of particular regulation in various treaties between different powers of Europe, and that, pursuant to such treaties, they are determinable in Great Britain, in the last resort, before the king himself, in his privy council, where the fact, as well as the law, undergoes a re-examination. This alone demonstrates the impolicy of inserting a fundamental provision in the Constitution which would make the State systems a standard for the national government in the article under consideration, and the danger of encumbering the government with any constitutional provisions the propriety of which is not indisputable.

My convictions are equally strong that great advantages result from the separation of the equity from the law jurisdiction, and that the causes which belong to the former would be improperly committed to juries. The great and primary use of a court of equity is to give relief IN EXTRAORDINARY CASES, which are EXCEPTIONS * to general rules. To unite the jurisdiction of such cases with the ordinary jurisdiction, must have a tendency to unsettle the general rules, and to subject every case that

* It is true that the principles by which that relief is governed are now reduced to a regular system; but it is not the less true that they are in the main applicable to SPECIAL circumstances, which form exceptions to general rules.

arises to a SPECIAL determination; while a separation of the one from the other has the contrary effect of rendering one a sentinel over the other, and of keeping each within the expedient limits. Besides this, the circumstances that constitute cases proper for courts of equity are in many instances so nice and intricate, that they are incompatible with the genius of trials by jury. They require often such long, deliberate, and critical investigation as would be impracticable to men called from their occupations, and obliged to decide before they were permitted to return to them. The simplicity and expedition which form the distinguishing characters of this mode of trial require that the matter to be decided should be reduced to some single and obvious point; while the litigations usual in chancery frequently comprehend a long train of minute and independent particulars.

It is true that the separation of the equity from the legal jurisdiction is peculiar to the English system of jurisprudence: which is the model that has been followed in several of the States. But it is equally true that the trial by jury has been unknown in every case in which they have been united. And the separation is essential to the preservation of that institution in its pristine purity. The nature of a court of equity will readily permit the extension of its jurisdiction to matters of law; but it is not a little to be suspected, that the attempt to extend the jurisdiction of the courts of law to matters of equity will not only be unproductive of the advantages which may be derived from courts of chancery, on the plan upon which they are established in this State, but will tend gradually to change the nature of the courts of law, and to undermine the trial by jury, by introducing questions too complicated for a decision in that mode.

These appeared to be conclusive reasons against incorporating the systems of all the States, in the formation of the national judiciary, according to what may be conjectured to have been the attempt of the Pennsylvania minority. Let us now examine how far the proposition of Massachusetts is calculated to remedy the supposed defect.

It is in this form: "In civil actions between citizens of different States, every issue of fact, arising in ACTIONS AT COMMON LAW, may be tried by a jury if the parties, or either of them request it."

This, at best, is a proposition confined to one description of causes; and the inference is fair, either that the Massachusetts convention considered that as the only class of federal causes, in which the trial by jury would be proper; or that if desirous of a more extensive provision, they found it impracticable to devise one which would properly answer the end. If the first, the omission of a regulation respecting so partial an object can never be considered as a material imperfection in the system. If the last, it affords a strong corroboration of the extreme difficulty of the thing.

But this is not all: if we advert to the observations already made respecting the courts that subsist in the several States of the Union, and the different powers exercised by them, it will appear that there are no expressions more vague and indeterminate than those which have been employed to characterize THAT species of causes which it is intended shall be entitled to a trial by jury. In this State, the boundaries between actions at common law and actions of equitable jurisdiction, are ascertained in conformity to the rules which prevail in England upon that subject. In many of the other States the boundaries are less precise. In some of them every cause is to be tried in a court of common law, and upon that foundation every action may be considered as an action at common law, to be determined by a jury, if the parties, or either of them, choose it. Hence the same irregularity and confusion would be introduced by a compliance with this proposition, that I have already noticed as resulting from the regulation proposed by the Pennsylvania minority. In one State a cause would receive its determination from a jury, if the parties, or either of them, requested it; but in another State, a cause exactly similar to the other, must be decided without the intervention of a jury, because the State judicatories varied as to common-law jurisdiction.

It is obvious, therefore, that the Massachusetts proposition, upon this subject cannot operate as a general regulation, until some uniform plan, with respect to the limits of common-law and equitable jurisdictions, shall be adopted by the different States. To devise a plan of that kind is a task arduous in itself, and which it would require much time and reflection to mature. It would be extremely difficult, if not impossible, to suggest any general regulation that would be acceptable to all the States in the Union, or that would perfectly quadrate with the several State institutions.

It may be asked, Why could not a reference have been made to the constitution of this State, taking that, which is allowed by me to be a good one, as a standard for the United States? I answer that it is not very probable the other States would entertain the same opinion of our institutions as we do ourselves. It is natural to suppose that they are hitherto more attached to their own, and that each would struggle for the preference. If the plan of taking one State as a model for the whole had been thought of in the convention, it is to be presumed that the adoption of it in that body would have been rendered difficult by the predilection of each representation in favor of its own government; and it must be uncertain which of the States would have been taken as the model. It has been shown that many of them would be improper ones. And I leave it to conjecture, whether, under all circumstances, it is most likely that New York, or some other State, would have been preferred. But admit that a judicious selection could have been effected in the convention, still there would have been great danger of jealousy and disgust in the other States, at the partiality which had been shown to the institutions of one. The enemies of the plan would have been furnished with a fine pretext for raising a host of local prejudices against it, which perhaps might have hazarded, in no inconsiderable degree, its final establishment.

To avoid the embarrassments of a definition of the cases which the trial by jury ought to embrace, it is

sometimes suggested by men of enthusiastic tempers, that a provision might have been inserted for establishing it in all cases whatsoever. For this I believe, no precedent is to be found in any member of the Union; and the considerations which have been stated in discussing the proposition of the minority of Pennsylvania, must satisfy every sober mind that the establishment of the trial by jury in ALL cases would have been an unpardonable error in the plan.

In short, the more it is considered the more arduous will appear the task of fashioning a provision in such a form as not to express too little to answer the purpose, or too much to be advisable; or which might not have opened other sources of opposition to the great and essential object of introducing a firm national government.

I cannot but persuade myself, on the other hand, that the different lights in which the subject has been placed in the course of these observations, will go far towards removing in candid minds the apprehensions they may have entertained on the point. They have tended to show that the security of liberty is materially concerned only in the trial by jury in criminal cases, which is provided for in the most ample manner in the plan of the convention; that even in far the greatest proportion of civil cases, and those in which the great body of the community is interested, that mode of trial will remain in its full force, as established in the State constitutions, untouched and unaffected by the plan of the convention; that it is in no case abolished * by that plan; and that there are great if not insurmountable difficulties in the way of making any precise and proper provision for it in a Constitution for the United States.

The best judges of the matter will be the least anxious for a constitutional establishment of the trial by jury in civil cases, and will be the most ready to admit that the changes which are continually happening in the

* *Vide* No. LXXXI., in which the supposition of its being abolished by the appellate jurisdiction in matters of fact being vested in the Supreme Court, is examined and refuted.

affairs of society may render a different mode of determining questions of property preferable in many cases in which that mode of trial now prevails. For my part, I acknowledge myself to be convinced that even in this State it might be advantageously extended to some cases to which it does not at present apply, and might as advantageously be abridged in others. It is conceded by all reasonable men that it ought not to obtain in all cases. The examples of innovations which contract its ancient limits, as well in these States as in Great Britain, afford a strong presumption that its former extent has been found inconvenient, and give room to suppose that future experience may discover the propriety and utility of other exceptions. I suspect it to be impossible in the nature of the thing to fix the salutary point at which the operation of the institution ought to stop, and this is with me a strong argument for leaving the matter to the discretion of the legislature.

This is now clearly understood to be the case in Great Britain, and it is equally so in the State of Connecticut; and yet it may be safely affirmed that more numerous encroachments have been made upon the trial by jury in this State since the Revolution, though provided for by a positive article of our constitution, than has happened in the same time either in Connecticut or Great Britain. It may be added that these encroachments have generally originated with the men who endeavor to persuade the people they are the warmest defenders of popular liberty, but who have rarely suffered constitutional obstacles to arrest them in a favorite career. The truth is that the general GENIUS of a government is all that can be substantially relied upon for permanent effects. Particular provisions, though not altogether useless, have far less virtue and efficacy than are commonly ascribed to them; and the want of them will never be, with men of sound discernment, a decisive objection to any plan which exhibits the leading characters of a good government.

It certainly sounds not a little harsh and extraordinary

to affirm that there is no security for liberty in a Constitution which expressly establishes the trial by jury in criminal cases, because it does not do it in civil also; while it is a notorious fact that Connecticut, which has been always regarded as the most popular State in the Union, can boast of no constitutional provision for either.

PUBLIUS.

From McLean's *Edition, New York,* M.DCC.LXXXVIII.

THE FEDERALIST. No. LXXXIV.

(HAMILTON.)

To the People of the State of New York:

In the course of the foregoing review of the Constitution, I have taken notice of, and endeavored to answer most of the objections which have appeared against it. There, however, remain a few which either did not fall naturally under any particular head or were forgotten in their proper places. These shall now be discussed; but as the subject has been drawn into great length, I shall so far consult brevity as to comprise all my observations on these miscellaneous points in a single paper.

The most considerable of the remaining objections is that the plan of the convention contains no bill of rights. Among other answers given to this, it has been upon different occasions remarked that the constitutions of several of the States are in a similar predicament. I add that New York is of the number. And yet the opposers of the new system, in this State, who profess an unlimited admiration for its constitution, are among the most intemperate partisans of a bill of rights. To justify their zeal in this matter, they allege two things: one is that, though the constitution of New York has no bill of rights prefixed to it, yet it contains, in the body of it, various provisions in favor of particular privileges and rights, which, in substance amount to the same thing; the other is, that the Constitution adopts, in their full extent, the common and statute law of Great Britain, by which many other rights, not expressed in it, are equally secured.

To the first I answer, that the Constitution proposed by the convention contains, as well as the constitution of this State, a number of such provisions.

Independent of those which relate to the structure of the government, we find the following: Article 1, section 3, clause 7—"Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law." Section 9, of the same article, clause 2—"The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Clause 3—"No bill of attainder or *ex-post-facto* law shall be passed." Clause 7—"No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state." Article 3, section 2, clause 3—"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." Section 3, of the same article—"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court." And clause 3, of the same section—"The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."

It may well be a question, whether these are not, upon the whole, of equal importance with any which are to be found in the constitution of this State. The establishment of the writ of *habeas corpus*, the prohibition of *ex-post-facto* laws, and of TITLES OF NOBILITY, TO WHICH WE HAVE

NO CORRESPONDING PROVISION IN OUR CONSTITUTION, are perhaps greater securities to liberty and republicanism than any it contains. The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny. The observations of the judicious Blackstone,* in reference to the latter, are well worthy of recital: «To bereave a man of life, [says he,] or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore A MORE DANGEROUS ENGINE of arbitrary government.» And as a remedy for this fatal evil he is everywhere peculiarly emphatical in his encomiums on the *habeas-corpus* act, which in one place he calls «the BULWARK of the British Constitution.»†

Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner-stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people.

To the second — that is, to the pretended establishment of the common and statute law by the Constitution, I answer, that they are expressly made subject «to such alterations and provisions as the legislature shall from time to time make concerning the same.» They are therefore at any moment liable to repeal by the ordinary legislative power, and of course have no constitutional sanction. The only use of the declaration was to recognize the ancient law and to remove doubts which might have been occasioned by the Revolution. This conse-

**Vide* Blackstone's «Commentaries,» vol. I., p. 136.

†*Vide* Blackstone's «Commentaries,» vol. iv., p. 438.

quently can be considered as no part of a declaration of rights, which under our constitutions must be intended as limitations of the power of the government itself.

It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by succeeding princes. Such was the PETITION OF RIGHT assented to by Charles I., in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations. "WE, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ORDAIN and ESTABLISH this Constitution for the United States of America." Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.

But a minute detail of particular rights is certainly far less applicable to a Constitution like that under consideration, which is merely intended to regulate the general political interests of the nation, than to a constitution which has the regulation of every species of personal and private concerns. If, therefore, the loud clamors against the plan of the convention, on this score, are well founded, no epithets of reprobation will be too strong for the constitution of this State. But the truth is, that both of

them contain all which, in relation to their objects, is reasonably to be desired.

I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretense for claiming that power. They might urge with a semblance of reason, that the Constitution ought not to be charged with the absurdity of providing against the abuse of an authority which was not given, and that the provision against restraining the liberty of the press afforded a clear implication, that a power to prescribe proper regulations concerning it was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to the doctrine of constructive powers, by the indulgence of an injudicious zeal for bills of rights.

On the subject of the liberty of the press, as much as has been said, I cannot forbear adding a remark or two: in the first place, I observe, that there is not a syllable concerning it in the constitution of this State; in the next, I contend, that whatever has been said about it in that of any other State, amounts to nothing. What signifies a declaration, that "the liberty of the press shall be inviolably preserved"? What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and from this I infer, that its security, whatever fine declarations may be inserted in any con-

stitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government.* And here, after all, as is intimated upon another occasion, must we seek for the only solid basis of all our rights.

There remains but one other view of this matter to conclude the point. The truth is, after all the declamations we have heard, that the Constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS. The several bills of rights in Great Britain form its Constitution, and conversely the constitution of each State is its bill of rights. And the proposed Constitution, if adopted, will be the bill of rights of the Union. Is it one object of a bill of rights to declare and specify the political privileges of the citizens in the structure and administration of the government? This is done in the most ample and precise manner in the plan of the convention; comprehending various precautions for the public security, which are not to be found in any of the State constitutions. Is another object of a bill of rights to define certain immunities and modes

* To show that there is a power in the Constitution by which the liberty of the press may be affected, recourse has been had to the power of taxation. It is said that duties may be laid upon the publications so high as to amount to a prohibition. I know not by what logic it could be maintained, that the declarations in the State constitutions, in favor of the freedom of the press, would be a constitutional impediment to the imposition of duties upon publications by the State legislatures. It cannot certainly be pretended that any degree of duties, however low, would be an abridgment of the liberty of the press. We know that newspapers are taxed in Great Britain, and yet it is notorious that the press nowhere enjoys greater liberty than in that country. And if duties of any kind may be laid without a violation of that liberty, it is evident that the extent must depend on legislative discretion, regulated by public opinion; so that, after all, general declarations respecting the liberty of the press, will give it no greater security than it will have without them. The same invasions of it may be effected under the State constitutions which contain those declarations through the means of taxation, as under the proposed Constitution, which has nothing of the kind. It would be quite as significant to declare that government ought to be free, that taxes ought not to be excessive, etc., as that the liberty of the press ought not to be restrained.

of proceeding, which are relative to personal and private concerns? This we have seen has also been attended to, in a variety of cases, in the same plan. Adverting therefore to the substantial meaning of a bill of rights, it is absurd to allege that it is not to be found in the work of the convention. It may be said that it does not go far enough, though it will not be easy to make this appear; but it can with no propriety be contended that there is no such thing. It certainly must be immaterial what mode is observed as to the order of declaring the rights of the citizens, if they are to be found in any part of the instrument which establishes the government. And hence it must be apparent, that much of what has been said on this subject rests merely on verbal and nominal distinctions, entirely foreign from the substance of the thing.

Another objection which has been made, and which, from the frequency of its repetition, it is to be presumed is relied on, is of this nature: "It is improper [say the objectors] to confer such large powers, as are proposed, upon the national government, because the seat of that government must of necessity be too remote from many of the States to admit of a proper knowledge on the part of the constituent, of the conduct of the representative body." This argument, if it proves any thing, proves that there ought to be no general government whatever. For the powers which, it seems to be agreed on all hands, ought to be vested in the Union, cannot be safely intrusted to a body which is not under every requisite control. But there are satisfactory reasons to show that the objection is in reality not well founded. There is in most of the arguments which relate to distance a palpable illusion of the imagination. What are the sources of information by which the people in Montgomery County must regulate their judgment of the conduct of their representatives in the State legislature? Of personal observation they can have no benefit. This is confined to the citizens on the spot. They must therefore depend on the information of intelligent men, in whom they confide; and how

must these men obtain their information? Evidently from the complexion of public measures, from the public prints, from correspondences with their representatives, and with other persons who reside at the place of their deliberations. This does not apply to Montgomery County only, but to all the counties at any considerable distance from the seat of government.

It is equally evident that the same sources of information would be open to the people in relation to the conduct of their representatives in the general government, and the impediments to a prompt communication which distance may be supposed to create, will be overbalanced by the effects of the vigilance of the State governments. The executive and legislative bodies of each State will be so many sentinels over the persons employed in every department of the national administration; and as it will be in their power to adopt and pursue a regular and effectual system of intelligence, they can never be at a loss to know the behavior of those who represent their constituents in the national councils, and can readily communicate the same knowledge to the people. Their disposition to apprise the community of whatever may prejudice its interests from another quarter, may be relied upon, if it were only from the rivalship of power. And we may conclude with the fullest assurance that the people, through that channel, will be better informed of the conduct of their national representatives, than they can be by any means they now possess of that of their State representatives.

It ought also to be remembered that the citizens who inhabit the country at and near the seat of government will, in all questions that affect the general liberty and prosperity, have the same interest with those who are at a distance, and that they will stand ready to sound the alarm when necessary, and to point out the actors in any pernicious project. The public papers will be expeditious messengers of intelligence to the most remote inhabitants of the Union.

Among the many curious objections which have appeared

against the proposed Constitution, the most extraordinary and the least colorable is derived from the want of some provision respecting the debts due to the United States. This has been represented as a tacit relinquishment of those debts, and as a wicked contrivance to screen public defaulters. The newspapers have teemed with the most inflammatory railings on this head; yet there is nothing clearer than that the suggestion is entirely void of foundation, the offspring of extreme ignorance or extreme dishonesty. In addition to the remarks I have made upon the subject in another place, I shall only observe that as it is a plain dictate of common-sense, so it is also an established doctrine of political law, that "STATES NEITHER LOSE ANY OF THEIR RIGHTS, NOR ARE DISCHARGED FROM ANY OF THEIR OBLIGATIONS, BY A CHANGE IN THE FORM OF THEIR CIVIL GOVERNMENT." *

The last objection of any consequence, which I at present recollect, turns upon the article of expense. If it were even true, that the adoption of the proposed government would occasion a considerable increase of expense, it would be an objection that ought to have no weight against the plan.

The great bulk of the citizens of America are with reason convinced, that Union is the basis of their political happiness. Men of sense of all parties now, with few exceptions, agree that it cannot be preserved under the present system, nor without radical alterations; that new and extensive powers ought to be granted to the national head, and that these require a different organization of the federal government — a single body being an unsafe depositary of such ample authorities. In conceding all this, the question of expense must be given up; for it is impossible, with any degree of safety, to narrow the foundation upon which the system is to stand. The two branches of the legislature are, in the first instance, to consist of only sixty-five persons, which is

* *Vide* Rutherford's "Institutes," vol. ii., book ii, chap. x., sect. xiv. and xv. *Vide* also Grotius, book ii, chap. ix., sects. viii. and ix.

the same number of which Congress, under the existing Confederation, may be composed. It is true that this number is intended to be increased; but this is to keep pace with the progress of the population and resources of the country. It is evident that a less number would, even in the first instance, have been unsafe, and that a continuance of the present number would, in a more advanced stage of population, be a very inadequate representation of the people.

Whence is the dreaded augmentation of expense to spring? One source indicated, is the multiplication of offices under the new government. Let us examine this a little.

It is evident that the principal departments of the administration under the present government, are the same which will be required under the new. There are now a Secretary of War, a Secretary of Foreign Affairs, a Secretary for Domestic Affairs, a Board of Treasury, consisting of three persons, a Treasurer, assistants, clerks, etc. These officers are indispensable under any system, and will suffice under the new as well as the old. As to ambassadors and other ministers and agents in foreign countries, the proposed Constitution can make no other difference than to render their characters, where they reside, more respectable, and their services more useful. As to persons to be employed in the collection of the revenues, it is unquestionably true that these will form a very considerable addition to the number of federal officers; but it will not follow that this will occasion an increase of public expense. It will be in most cases nothing more than an exchange of State for national officers. In the collection of all duties, for instance, the persons employed will be wholly of the latter description. The States individually will stand in no need of any for this purpose. What difference can it make in point of expense to pay officers of the customs appointed by the State or by the United States? There is no good reason to suppose that either the number or the salaries of the latter will be greater than those of the former.

Where then are we to seek for those additional articles of expense which are to swell the account to the enormous size that has been represented to us? The chief item which occurs to me respects the support of the judges of the United States. I do not add the President, because there is now a president of Congress, whose expenses may not be far, if any thing, short of those which will be incurred on account of the President of the United States. The support of the judges will clearly be an extra expense, but to what extent will depend on the particular plan which may be adopted in regard to this matter. But upon no reasonable plan can it amount to a sum which will be an object of material consequence.

Let us now see what there is to counterbalance any extra expense that may attend the establishment of the proposed government. The first thing which presents itself is that a great part of the business which now keeps Congress sitting through the year will be transacted by the President. Even the management of foreign negotiations will naturally devolve upon him, according to general principles concerted with the Senate, and subject to their final concurrence. Hence it is evident that a portion of the year will suffice for the session of both the Senate and the House of Representatives; we may suppose about a fourth for the latter and a third, or perhaps half, for the former. The extra business of treaties and appointments may give this extra occupation to the Senate. From this circumstance we may infer that, until the House of Representatives shall be increased greatly beyond its present number, there will be a considerable saving of expense from the difference between the constant session of the present and the temporary session of the future Congress.

But there is another circumstance of great importance in the view of economy. The business of the United States has hitherto occupied the State legislatures, as well as Congress. The latter has made requisitions which the former have had to provide for. Hence it has happened that the sessions of the State legislatures have

been protracted greatly beyond what was necessary for the execution of the mere local business of the States. More than half their time has been frequently employed in matters which related to the United States. Now the members who compose the legislatures of the several States amount to two thousand and upwards, which number has hitherto performed what under the new system will be done in the first instance by sixty-five persons, and probably at no future period by above a fourth or a fifth of that number. The Congress under the proposed government will do all the business of the United States themselves, without the intervention of the State legislatures, who thenceforth will have only to attend to the affairs of their particular States, and will not have to sit in any proportion as long as they have heretofore done. This difference in the time of the sessions of the State legislatures will be clear gain, and will alone form an article of saving, which may be regarded as an equivalent for any additional objects of expense that may be occasioned by the adoption of the new system.

The result from these observations is that the sources of additional expense from the establishment of the proposed Constitution are much fewer than may have been imagined; that they are counterbalanced by considerable objects of saving; and that while it is questionable on which side the scale will preponderate, it is certain that a government less expensive would be incompetent to the purposes of the Union. PUBLIUS.

From McLean's *Edition, New York*, M.DCC.LXXXVIII.

THE FEDERALIST. No. LXXXV.

(HAMILTON.)

To the People of the State of New York:

According to the formal division of the subject of these papers, announced in my first number, there would appear still to remain for discussion two points: "the analogy of the proposed government to your own State constitution," and "the additional security which its adoption will afford to republican government, to liberty, and to property." But these heads have been so fully anticipated and exhausted in the progress of the work, that it would now scarcely be possible to do any thing more than repeat, in a more dilated form, what has been heretofore said, which the advanced stage of the question, and the time already spent upon it, conspire to forbid.

It is remarkable, that the resemblance of the plan of the convention to the act which organizes the government of this State holds, not less with regard to many of the supposed defects, than to the real excellences of the former. Among the pretended defects are the re-eligibility of the Executive, the want of a council, the omission of a formal bill of rights, the omission of a provision respecting the liberty of the press. These and several others which have been noted in the course of our inquiries are as much chargeable on the existing constitution of this State, as on the one proposed for the Union; and a man must have slender pretensions to consistency, who can rail at the latter for imperfections which he finds no difficulty in excusing in the former. Nor indeed can there be a better proof of the insincerity and affectation of some of the zealous adversaries of the plan of the convention among us, who profess to be the devoted admirers of the gov-

ernment under which they live, than the fury with which they have attacked that plan, for matters in regard to which our own constitution is equally or perhaps more vulnerable.

The additional securities to republican government, to liberty and to property, to be derived from the adoption of the plan under consideration, consist chiefly in the restraints which the preservation of the Union will impose on local factions and insurrections, and on the ambition of powerful individuals in single States, who may acquire credit and influence enough, from leaders and favorites, to become the despots of the people; in the diminution of the opportunities to foreign intrigue, which the dissolution of the Confederacy would invite and facilitate; in the prevention of extensive military establishments, which could not fail to grow out of wars between the States in a disunited situation; in the express guaranty of a republican form of government to each; in the absolute and universal exclusion of titles of nobility; and in the precautions against the repetition of those practices on the part of the State governments which have undermined the foundations of property and credit, have planted mutual distrust in the breasts of all classes of citizens, and have occasioned an almost universal prostration of morals.

Thus have I, fellow-citizens, executed the task I had assigned to myself; with what success, your conduct must determine. I trust at least you will admit that I have not failed in the assurance I gave you respecting the spirit with which my endeavors should be conducted. I have addressed myself purely to your judgments, and have studiously avoided those asperities which are too apt to disgrace political disputants of all parties, and which have been not a little provoked by the language and conduct of the opponents of the Constitution. The charge of a conspiracy against the liberties of the people, which has been indiscriminately brought against the advocates of the plan, has something in it too wanton and too malignant, not to excite the indignation of every man who

feels in his own bosom a refutation of the calumny. The perpetual changes which have been rung upon the wealthy, the well-born, and the great, have been such as to inspire the disgust of all sensible men. And the unwarrantable concealments and misrepresentations which have been in various ways practiced to keep the truth from the public eye have been of a nature to demand the reprobation of honest men. It is not impossible that these circumstances may have occasionally betrayed me into intemperances of expression which I did not intend; it is certain that I have frequently felt a struggle between sensibility and moderation; and if the former has in some instances prevailed, it must be my excuse that it has been neither often nor much.

Let us now pause and ask ourselves whether, in the course of these papers, the proposed Constitution has not been satisfactorily vindicated from the aspersions thrown upon it; and whether it has not been shown to be worthy of the public approbation, and necessary to the public safety and prosperity. Every man is bound to answer these questions to himself, according to the best of his conscience and understanding, and to act agreeably to the genuine and sober dictates of his judgment. This is a duty from which nothing can give him a dispensation. 'T is one that he is called upon, nay, constrained by all the obligations that form the bands of society, to discharge sincerely and honestly. No partial motive, no particular interest, no pride of opinion, no temporary passion or prejudice, will justify to himself, to his country, or to his posterity, an improper election of the part he is to act. Let him beware of an obstinate adherence to party; let him reflect that the object upon which he is to decide is not a particular interest of the community, but the very existence of the nation; and let him remember that a majority of America has already given its sanction to the plan which he is to approve or reject.

I shall not dissemble that I feel an entire confidence in the arguments which recommend the proposed system to your adoption, and that I am unable to discern any real

force in those by which it has been opposed. I am persuaded that it is the best which our political situation, habits, and opinions will admit, and superior to any the revolution has produced.

Concessions on the part of the friends of the plan, that it has not a claim to absolute perfection, have afforded matter of no small triumph to its enemies. "Why," say they, "should we adopt an imperfect thing? Why not amend it and make it perfect before it is irrevocably established?" This may be plausible enough, but it is only plausible. In the first place I remark, that the extent of these concessions has been greatly exaggerated. They have been stated as amounting to an admission that the plan is radically defective, and that without material alterations the rights and the interests of the community cannot be safely confided to it. This, as far as I have understood the meaning of those who make the concessions, is an entire perversion of their sense. No advocate of the measure can be found, who will not declare as his sentiment, that the system, though it may not be perfect in every part, is, upon the whole, a good one; is the best that the present views and circumstances of the country will permit; and is such an one as promises every species of security which a reasonable people can desire.

I answer in the next place, that I should esteem it the extreme of imprudence to prolong the precarious state of our national affairs, and to expose the Union to the jeopardy of successive experiments, in the chimerical pursuit of a perfect plan. I never expect to see a perfect work from imperfect man. The result of the deliberations of all collective bodies must necessarily be a compound, as well of the errors and prejudices, as of the good sense and wisdom, of the individuals of whom they are composed. The compacts which are to embrace thirteen distinct States in a common bond of amity and union, must as necessarily be a compromise of as many dissimilar interests and inclinations. How can perfection spring from such materials?

The reasons assigned in an excellent little pamphlet

lately published in this city,* are unanswerable to show the utter improbability of assembling a new convention, under circumstances in any degree so favorable to a happy issue, as those in which the late convention met, deliberated, and concluded. I will not repeat the arguments there used, as I presume the production itself has had an extensive circulation. It is certainly well worthy the perusal of every friend to his country. There is, however, one point of light in which the subject of amendments still remains to be considered, and in which it has not yet been exhibited to public view. I cannot resolve to conclude without first taking a survey of it in this aspect.

It appears to me susceptible of absolute demonstration, that it will be far more easy to obtain subsequent than previous amendments to the Constitution. The moment an alteration is made in the present plan, it becomes, to the purpose of adoption, a new one, and must undergo a new decision of each State. To its complete establishment throughout the Union, it will therefore require the concurrence of thirteen States. If, on the contrary, the Constitution proposed should once be ratified by all the States as it stands, alterations in it may at any time be effected by nine States. Here, then, the chances are as thirteen to nine † in favor of subsequent amendment, rather than of the original adoption of an entire system.

This is not all. Every Constitution for the United States must inevitably consist of a great variety of particulars, in which thirteen independent States are to be accommodated in their interests or opinions of interest. We may of course expect to see, in any body of men charged with its original formation, very different combinations of the parts upon different points. Many of those who form a majority on one question, may become the minority on a second, and an association dissimilar to either may constitute the majority on a third. Hence

* Entitled "An Address to the People of the State of New York."

† It may rather be said TEN, for though two thirds may set on foot the measure, three fourths must ratify.

the necessity of moulding and arranging all the particulars which are to compose the whole, in such a manner as to satisfy all the parties to the compact; and hence, also, an immense multiplication of difficulties and casualties in obtaining the collective assent to a final act. The degree of that multiplication must evidently be in a ratio to the number of particulars and the number of parties.

But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point — no giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment, that amendment must infallibly take place. There can, therefore, be no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution.

In opposition to the probability of subsequent amendments, it has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possessed. For my own part I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government, not to the mass of its powers; and on this account alone, I think there is no weight in the observation just stated. I also think there is little weight in it on another account. The intrinsic difficulty of governing thirteen States at any rate, independent of calculations upon an ordinary degree of public spirit and integrity, will, in my opinion constantly impose on the national rulers the necessity of a spirit of accommodation to the reasonable expectations of their constituents. But there is yet a further consideration, which proves beyond the possibility of a doubt, that the observation is futile. It is this that

the national rulers, whenever nine States concur, will have no option upon the subject. By the fifth article of the plan, the Congress will be obliged "on the application of the legislatures of two thirds of the States [which at present amount to nine], to call a convention for proposing amendments, which shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof." The words of this article are peremptory. The Congress "shall call a convention." Nothing in this particular is left to the discretion of that body. And of consequence, all the declamation about the disinclination to a change vanishes in air. Nor however difficult it may be supposed to unite two thirds or three fourths of the State legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people. We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority.

If the foregoing argument is a fallacy, certain it is that I am myself deceived by it, for it is, in my conception, one of those rare instances in which a political truth can be brought to the test of a mathematical demonstration. Those who see the matter in the same light with me, however zealous they may be for amendments, must agree in the propriety of a previous adoption, as the most direct road to their own object.

The zeal for attempts to amend, prior to the establishment of the Constitution, must abate in every man who is ready to accede to the truth of the following observations of a writer equally solid and ingenious: "To balance a large state or society [says he], whether monarchical or republican, on general laws, is a work of so great difficulty, that no human genius, however comprehensive, is able, by the mere dint of reason and reflection, to effect it. The judgments of many must unite in the work; experience must guide their labor; time must bring it to

perfection, and the feeling of inconveniences must correct the mistakes which they INEVITABLY fall into in their first trials and experiments."* These judicious reflections contain a lesson of moderation to all the sincere lovers of the Union, and ought to put them upon their guard against hazarding anarchy, civil war, a perpetual alienation of the States from each other, and perhaps the military despotism of a victorious demagogue, in the pursuit of what they are not likely to obtain, but from time and experience. It may be in me a defect of political fortitude, but I acknowledge that I cannot entertain an equal tranquillity with those who affect to treat the dangers of a longer continuance in our present situation as imaginary. A nation, without a national government, is, in my view, an awful spectacle. The establishment of a Constitution, in time of profound peace, by the voluntary consent of a whole people, is a prodigy, to the completion of which I look forward with trembling anxiety. I can reconcile it to no rules of prudence to let go the hold we now have, in so arduous an enterprise, upon seven out of the thirteen States, and after having passed over so considerable a part of the ground, to recommence the course. I dread the more the consequences of new attempts, because I know that powerful individuals, in this and in other States, are enemies to a general national government in every possible shape. PUBLIUS.

*Hume's "Essays," vol. i., page 128: "The Rise of Arts and Sciences."

APPENDIX.

ARTICLES OF CONFEDERATION.

ARTICLES of Confederation and perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE I. The style of this Confederacy shall be "The United States of America."

ART. II. Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled.

ART. III. The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ART. IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States, and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal

of property imported into any State, to any other State of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years, nor shall any person, being a delegate, be capable of holding any office under the United States for which he or another for his benefit receives any salary, fees, or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to or from, and attendance on,

Congress, except for treason, felony, or breach of the peace.

ART. VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with, any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defense of such State or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only as in the judgment of the United States in Congress assembled shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have

received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ART. VII. When land forces are raised by any State for the common defense, all officers of or under the rank of colonel shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct; and all vacancies shall be filled up by the State which first made the appointment.

ART. VIII. All charges of war and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, and such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

ART. IX. The United States in Congress assembled shall have the sole and exclusive right and power of

determining on peace and war, except in the cases mentioned in the sixth article — of sending and receiving ambassadors — entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever — of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated — of granting letters of marque and reprisal in times of peace — appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: — Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number

not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or, being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the Supreme or Superior Court of the State where the cause shall be tried, "WELL AND TRULY TO HEAR AND DETERMINE THE MATTER IN QUESTION ACCORDING TO THE BEST OF HIS JUDGMENT, WITHOUT FAVOR, AFFECTION, OR HOPE OF REWARD," provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more States, whose jurisdictions as they may respect such lands and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed

for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States — fixing the standard of weights and measures throughout the United States — regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated — establishing and regulating post offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office — appointing all officers of the land forces in the service of the United States, excepting regimental officers — appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States — making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State; to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; and to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years — to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses — to borrow money, or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted — to build and equip a navy — to agree upon the number of land forces, and to make requisitions from each State for its

quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on, by the United States in Congress assembled; but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared: and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on, by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment, require secrecy, and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

ART. X. The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with: provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ART. XI. Canada, acceding to this Confederation, and joining in the measures of the United States, shall be admitted into and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ART. XII. All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. XIII. Every State shall abide by the determinations of the United States in Congress assembled, on all

questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

And whereas it hath pleased the Great Governor of the world to incline the hearts of the legislatures we respectfully represent in Congress to approve of and to authorize us to ratify the said Articles of Confederation and perpetual Union, Know ye, That we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained; and we do further solemnly plight and engage the faith of our respective constituents that they shall abide by the determinations of the United States in Congress assembled, on all questions which by the said Confederation are submitted to them. And that the Articles thereof shall be inviolably observed by the States we respectively represent, and the Union shall be perpetual.

THE FEDERAL CONSTITUTION,

AS AGREED UPON

BY THE CONVENTION,

SEPTEMBER 17, 1787.

WE, THE PEOPLE OF THE UNITED STATES, IN ORDER TO FORM A MORE PERFECT UNION, ESTABLISH JUSTICE, INSURE DOMESTIC TRANQUILLITY, PROVIDE FOR THE COMMON DEFENSE, PROMOTE THE GENERAL WELFARE, AND SECURE THE BLESSINGS OF LIBERTY TO OURSELVES AND OUR POSTERITY, DO ORDAIN AND ESTABLISH THIS CONSTITUTION FOR THE UNITED STATES OF AMERICA.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECT. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for the electors of the most numerous branch of the State legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of

years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Sect. 3. The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, the second class at the expiration of the fourth year and the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected,

be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried, the Chief-Justice shall preside. And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.

Sect. 4. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sect. 5. Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECT. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session or their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECT. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall

likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and the House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sect. 8. The Congress shall have power—

To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States: but all duties, imposts, and excises, shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors

the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Sect. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to

the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex-post-facto* law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the CENSUS or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECT. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex-post-facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net proceeds of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress,

lay any duties of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECT. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the

representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECT. 2. The President shall be commander-in-chief of the army and navy of the United States; and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECT. 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECT. 4. The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECT. 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECT. 2. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizen of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECT. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two

witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

Sect. 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Sect. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Sect. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to

prejudice any claims of the United States, or of any particular State.

Sect. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the Executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

DONE in convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

NEW HAMPSHIRE . .	JOHN LANGDON, NICHOLAS GILMAN.
MASSACHUSETTS . .	NATHANIEL GORHAM, RUFUS KING.
CONNECTICUT . . .	WILLIAM SAMUEL JOHNSON, ROGER SHERMAN.
NEW YORK	ALEXANDER HAMILTON.
NEW JERSEY	WILLIAM LIVINGSTON, DAVID BREARLEY, WILLIAM PATERSON, JONATHAN DAYTON.
PENNSYLVANIA . . .	BENJAMIN FRANKLIN, THOMAS MIFFLIN, ROBERT MORRIS, GEORGE CLYMER, THOMAS FITZSIMONS, JARED INGERSOLL, JAMES WILSON, GOUVERNEUR MORRIS.

DELAWARE	George Read, Gunning Bedford, Junior, John Dickinson, Richard Bassett, Jacob Broom.
MARYLAND	James M'Henry, Daniel Jenifer, of St. Thomas, Daniel Carroll.
VIRGINIA	John Blair, James Madison, Junior.
NORTH CAROLINA	William Blount, Richard Dobbs Spaight, Hugh Williamson.
SOUTH CAROLINA	John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler.
GEORGIA	William Few, Abraham Baldwin.

Attest, WILLIAM JACKSON, *Secretary.*

IN CONVENTION.

Monday, September 17, 1787.

President, The States of New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Resolved, That the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this convention, that it should afterwards be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention assenting to, and ratifying the same should give notice thereof to the United States in Congress assembled.

Resolved, That it is the opinion of this convention, that as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be

appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution; that after such publication the electors should be appointed, and the senators and representatives elected; that the electors should meet on the day fixed for the election of the President, and should transmit their votes certified, signed, sealed, and directed, as the Constitution requires, to the secretary of the United States in Congress assembled; that the senators and representatives should convene at the time and place assigned; that the senators should appoint a president of the Senate, for the sole purpose of receiving, opening, and counting the votes for President; and that after he shall be chosen, the Congress, together with the President, should without delay proceed to execute this Constitution.

By the unanimous order of the convention.

GEORGE WASHINGTON, *President.*

William Jackson, *Secretary.*

IN CONVENTION.

September 17, 1787.

Sir: We have now the honor to submit to the consideration of the United States in Congress assembled, that Constitution which has appeared to us the most advisable. The friends of our country have long seen and desired, that the power of making war, peace, and treaties, of levying money, and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the Union; but the impropriety of delegating such extensive trusts to one body of men is evident. Hence results the necessity of a different organization. It is obviously impracticable, in the federal government of the States, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of

liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstances as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the convention to be less rigid on points of inferior magnitude than might have been otherwise expected; and thus the Constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every State is not perhaps to be expected; but each will doubtless consider, that had her interest alone been consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish. With great respect, we have the honor to be, sir, your Excellency's most obedient and humble servants:

By unanimous order of the convention.

GEO. WASHINGTON, President.

His Excellency the President of Congress.

AMENDMENTS TO THE CONSTITUTION.

Although two modes of amendment are provided for by Art. V of the Constitution all Amendments thus far

adopted have been proposed by Congress and ratified by the required number of State legislatures; the other plan, namely calling upon Congress by State Conventions or legislatures to call a convention not having been tried.

The first ten Amendments were proposed in Congress during its first session, and were ratified December 15, 1791, the series being in the nature of a bill of rights.

The eleventh Amendment was proposed during the first session of the third Congress, and was ratified January 8, 1798. It was the direct result of the agitation following the decision of the Supreme Court in the famous law-suit of Chisolm vs. The State of Georgia. In 1792 Alexander Chisolm of South Carolina brought suit against the State of Georgia on a private claim. His lawyers argued that this court was vested by the Constitution with jurisdiction in cases of this sort and that the plaintiff could legally recover. The court gave judgment for Chisolm, and a writ of inquiry was issued, but never executed, since the legislature of Georgia, deeming this decision an encroachment upon the sovereignty of the State, passed an act making the execution of such a writ in that State punishable by death. The eleventh Amendment was at once resolved upon, and in 1798 was declared by the Supreme Court to have been constitutionally adopted, and it renounced its jurisdiction in such cases.

The twelfth Amendment was proposed in the first session of the eighth Congress, and was ratified September 25, 1804. It provided for a new method of electing the president and vice-president, and is said to have originated with Alexander Hamilton.

The thirteenth Amendment, which provides that slavery shall not exist in the United States, was ratified by December 18, 1865; and the fourteenth and fifteenth Amendments, relating to citizenship, representation, the public debt, suffrage, etc., were made necessary by the new conditions following the Civil War, and were ratified respectively July 21, 1868 and March 30, 1870.

The following are the Amendments as adopted:

ARTICLE THE FIRST.

Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE THE SECOND.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE THE THIRD.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in the manner prescribed by law.

ARTICLE THE FOURTH.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE THE FIFTH.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be

deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE THE SIXTH.

In all criminal prosecutions the accused shall enjoy the right of a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE THE SEVENTH.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE THE EIGHTH.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE THE NINTH.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE THE TENTH.

The powers not delegated to the United States by the Constitution or prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE THE ELEVENTH.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE THE TWELFTH.

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the vote shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall

act as President as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE THE THIRTEENTH.

SECT. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECT. 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE THE FOURTEENTH.

SECT. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECT. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is

denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECT 3. No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

SECT. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECT. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE THE FIFTEENTH.

SECT. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color, or previous condition of servitude.

SECT. 2. Congress shall have power to enforce this article by appropriate legislation.

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*This index is the one made for the edition published in Washington in 1831 by Philip R. Fendall, Esq. It has also been used by Mr. J. C. Hamilton in his edition (1864), and is there attributed to P. H. Kendall.

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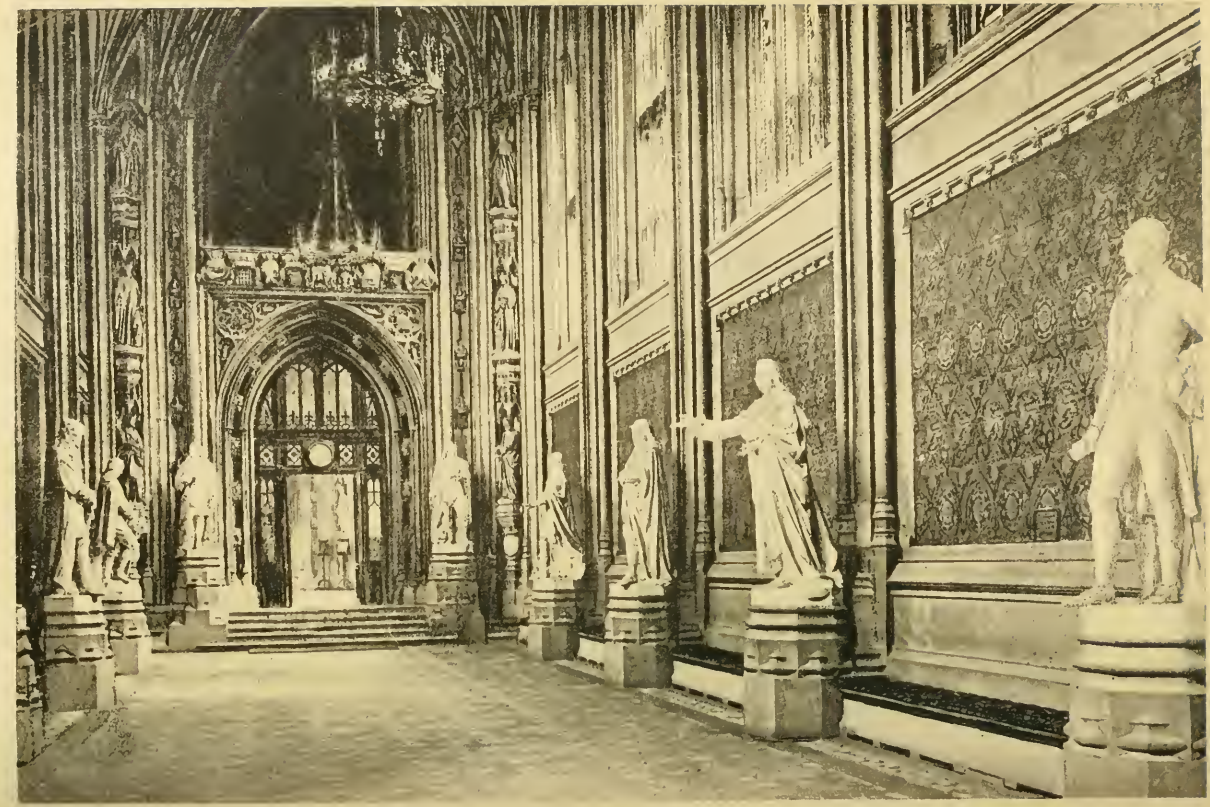

ST. STEPHEN'S HALL—HOUSE OF PARLIAMENT

THE ENGLISH CONSTITUTION

BY

WALTER BAGEHOT

Author of "History of the Unreformed Parliament," etc.

WITH AN INTRODUCTION BY

EDWIN ERLE SPARKS, Ph.D.

Associate Professor of American History at the University of Chicago

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INTRODUCTION

It has fallen to the lot of few writings upon so disputatious a subject as the nature of the English Constitution to meet with almost universal praise and demand at the time of its appearance. It has happened to a still smaller number to be equally in demand and equally popular more than a quarter of a century after publication. Contemporary writers hailed the appearance of Bagehot's "English Constitution" in this apparently preempted field as "the most novel and philosophical dissertation on this subject in any language or from any pen." Modern critics continue to pronounce it "the most brilliant political work that has appeared in England since the death of Burke."

While other students of England's government have described its forms and given facts concerning it, Bagehot has gone below the external forms and has seized upon the principles which vitalize these forms. He possesses the ideal constructive imagination for a student of political science which enables him to see the ultimate end of the multiplied tendencies in the body politic. His generalizations are numerous and they are as brilliant as they are complete.

To those who anticipate or even suggest a change in Britain's form of government, Bagehot has always proven a serious obstacle. He forces upon his reader the unquestioned conclusion that the monarchy of England exists as a logical necessity; that its existence is a result of inevitable laws working through centuries toward that end. The necessity and reasonableness of the lesser parts of the governmental machinery are demonstrated with equal force and clearness.

Nor must it be understood that Bagehot describes the government of his own country in a spirit of bigotry. He praises that which is to be praised, but condemns with equal vigor that which deserves condemnation. Upon many of the dangers which must be confronted in the natural trend of events he speaks with no uncertain words. His manifest fairness in thus dealing with his own country has doubly endeared him to his American readers.

Another quality which appeals to his admirers on this side of the Atlantic is his lack of partisanship. While many Americans demand a partisan bias in commentators upon their own government, feeling themselves fully able to make allowance for such coloring, all Americans wish to have a foreign people described with an exactness from which party feeling is entirely absent. This is obviously a difficult task for any writer. Among America's commentators on home government, which one may be counted absolutely free from partisan or sectional partiality?

Yet Bagehot succeeded in this particular to a remarkable degree. It has long been a saying that from a perusal of his work one could not tell whether he was a Liberal or a Conservative.

There is still another reason for the interest of American readers in this book. The author, as if conscious of the growing importance of England's young offspring in the West, has instituted many interesting and profitable comparisons between the institutions of the United States and those of his own country. To some persons these contrasts may not always seem to put the newer government in the best light. But when these comments are compared with the majority of those which have emanated from the countrymen of Bagehot, their seeming unfairness becomes fairness by contrast. Much may be pardoned Bagehot on the ground of unacquaintance with the United States. He had not the opportunity of such personal familiarity as made a later English writer, Bryce, acceptable in nearly all particulars to his trans-Atlantic readers.

The teachers and students of America will welcome this new edition of Bagehot's "English Constitution," which has long been a dependence in the class room. After a student has acquired a general knowledge of the practical workings of the government of England, such as he is likely to get in the study of his English History, no book that can be put into his hands will be so suggestive and mind-broadening as this treatise by Bagehot.

"The general reading public" is a term which a few years since meant a select few, but now numbers its constituents by thousands and its private libraries by shelf-loads. To these, Bagehot is commended as a most readable author upon an apparently uninteresting subject. His style is vivacious and fascinating. He invests the most inanimate topics with flesh and blood until they become living realities. Rarely has a writer been able to so combine the scholarly and the popular.

Although called to the bar in England, Bagehot found a literary career more suited to his taste. Nor was he confined to political subjects. Literary, economic, and even scientific subjects were covered in the wide range of his versatility. For several years he was editor of "The Economist." His death in 1877, at the age of 51, was the more to be deplored because he was in the midst of his productiveness.

Edwin E. Sparks

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THE ENGLISH CONSTITUTION.

I.

THE CABINET.

"On all great subjects," says Mr. Mill, "much remains to be said," and of none is this more true than of the English Constitution. The literature which has accumulated upon it is huge. But an observer who looks at the living reality will wonder at the contrast to the paper description. He will see in the life much which is not in the books; and he will not find in the rough practice many refinements of the literary theory.

It was natural — perhaps inevitable — that such an undergrowth of irrelevant ideas should gather round the British Constitution. Language is the tradition of nations; each generation describes what it sees, but it uses words transmitted from the past. When a great entity like the British Constitution has continued in connected outward sameness, but hidden inner change, for many ages, every generation inherits a series of inapt words — of maxims once true, but of which the truth is ceasing or has ceased. As a man's family go on muttering in his maturity incorrect phrases derived from a just observation of his early youth, so in the full activity of an historical constitution, its subjects repeat phrases true in the time of their fathers, and inculcated by those fathers, but now true no longer. Or, if I may say so, an ancient and ever-altering constitution is like an old man who still wears with attached fondness clothes in the fashion of his youth: what you see of him is the same; what you do not see is wholly altered.

There are two descriptions of the English Constitution which have exercised immense influence, but which are erroneous. First, it is laid down as a principle of the English polity, that in it the legislative, the executive,

and the judicial powers, are quite divided — that each is intrusted to a separate person or set of persons — that no one of these can at all interfere with the work of the other. There has been much eloquence expended in explaining how the rough genius of the English people, even in the Middle Ages, when it was especially rude, carried into life and practice that elaborate division of functions which philosophers had suggested on paper, but which they had hardly hoped to see, except on paper.

Secondly, it is insisted that the peculiar excellence of the British Constitution lies in a balanced union of three powers. It is said that the monarchical element, the aristocratic element, and the democratic element, have each a share in the supreme sovereignty, and that the assent of all three is necessary to the action of that sovereignty. Kings, Lords, and Commons, by this theory, are alleged to be not only the outward form, but the inner moving essence, the vitality of the Constitution. A great theory, called the theory of "Checks and Balances," pervades an immense part of political literature, and much of it is collected from or supported by English experience. Monarchy, it is said, has some faults, some bad tendencies, aristocracy others, democracy, again, others; but England has shown that a government can be constructed in which these evil tendencies exactly check, balance, and destroy one another — in which a good whole is constructed not simply in spite of, but by means of, the counteracting defects of the constituent parts.

Accordingly, it is believed that the principal characteristics of the English Constitution are inapplicable in countries where the materials for a monarchy or an aristocracy do not exist. That Constitution is conceived to be the best imaginable use of the political elements which the great majority of States in modern Europe inherited from the mediæval period. It is believed that out of these materials nothing better can be made than the English Constitution; but it is also believed that the essential parts of the English Constitution cannot be made

except from these materials. Now these elements are the accidents of a period and a region; they belong only to one or two centuries in human history, and to a few countries. The United States could not have become monarchical, even if the Constitutional Convention had decreed it, even if the component States had ratified it. The mystic reverence, the religious allegience, which are essential to a true monarchy, are imaginative sentiments that no legislature can manufacture in any people. These semi-filial feelings in government are inherited just as the true filial feelings in common life. You might as well adopt a father as make a monarchy; the special sentiment belonging to the one is as incapable of voluntary creation as the peculiar affection belonging to the other. If the practical part of the English Constitution could only be made out of a curious accumulation of mediæval materials, its interest would be half historical, and its imitability very confined.

No one can approach to an understanding of the English institutions, or of others which, being the growth of many centuries, exercise a wide sway over mixed populations, unless he divide them into two classes. In such constitutions there are two parts (not indeed separable with microscopic accuracy, for the genius of great affairs abhors nicety of division): first, those which excite and preserve the reverence of the population — the DIGNIFIED parts, if I may so call them; and next, the EFFICIENT parts — those by which it in fact, works and rules. There are two great objects which every constitution must attain to be successful, which every old and celebrated one must have wonderfully achieved: every constitution must first GAIN authority, and then USE authority; it must first win the loyalty and confidence of mankind, and then employ that homage in the work of government.

There are indeed practical men who reject the dignified parts of government. They say, we want only to attain results, to do business: a constitution is a collection of political means for political ends, and if you admit that any part of a constitution does no business, or that a

simpler machine would do equally well what it does, you admit that this part of the constitution, however dignified or awful it may be, is nevertheless in truth useless. And other reasoners, who distrust this bare philosophy, have propounded subtle arguments to prove that these dignified parts of old governments are cardinal components of the essential apparatus, great pivots of substantial utility; and so they manufactured fallacies which the plainer school have well exposed. But both schools are in error. The dignified parts of government are those which bring it force — which attract its motive power. The efficient parts only employ that power. The comely parts of a government HAVE need, for they are those upon which its vital strength depends. They may not do anything definite that a simpler polity would not do better; but they are the preliminaries, the needful pre-requisites of ALL work. They raise the army, though they do not win the battle.

Doubtless, if all subjects of the same government only thought of what was useful to them, and if they all thought the same thing useful, and all thought that same thing could be attained in the same way, the efficient members of a constitution would suffice, and no impressive adjuncts would be needed. But the world in which we live is organized far otherwise.

The most strange fact, though the most certain in nature, is unequal development of the human race. If we look back to the early ages of mankind, such as we seem in the faint distance to see them — if we call up the image of those dismal tribes in lake villages, or on wretched beaches — scarcely equal to the commonest material needs, cutting down trees slowly and painfully with stone tools, hardly resisting the attacks of huge, fierce animals — without culture, without leisure, without poetry, almost without thought — destitute of morality, with only a sort of magic for religion; and if we compare that imagined life with the actual life of Europe now, we are overwhelmed at the wide contrast — we can scarcely conceive ourselves to be of the same race as those in the far distance. There used to be a notion — not so much

widely asserted as deeply implanted, rather pervadingly latent than commonly apparent in political philosophy — that in a little while, perhaps ten years or so, all human beings might, without extraordinary appliances, be brought to the same level. But now, when we see by the painful history of mankind at what point we began, by what slow toil, what favorable circumstances, what accumulated achievements, civilized man has become at all worthy in any degree so to call himself — when we realize the tedium of history and the painfulness of results — our perceptions are sharpened as to the relative steps of our long and gradual progress. We have in a great community like England crowds of people scarcely more civilized than the majority of two thousand years ago; we have others, even more numerous, such as the best people were a thousand years since. The lower orders, the middle orders, are still, when tried by what is the standard of the educated "ten thousand," narrow-minded, unintelligent, incurious. It is useless to pile up abstract words. Those who doubt should go out into their kitchens. Let an accomplished man try what seems to him most obvious, most certain, most palpable in intellectual matters upon the housemaid and the footman, and he will find that what he says seems unintelligible, confused, and erroneous — that his audience think him mad and wild when he is speaking what is in his own sphere of thought the dullest platitude of cautious soberness. Great communities are like great mountains — they have in them the primary, secondary, and tertiary strata of human progress; the characteristics of the lower regions resemble the life of old times rather than the present life of the higher regions. And a philosophy which does not ceaselessly remember, which does not continually obtrude, the palpable differences of the various parts, will be a theory radically false, because it has omitted a capital reality — will be a theory essentially misleading, because it will lead men to expect what does not exist, and not to anticipate that which they will find.

Every one knows these plain facts, but by no means

every one has traced their political importance. When a state is constituted thus, it is not true that the lower classes will be wholly absorbed in the useful; on the contrary, they do not like anything so poor. No orator ever made an impression by appealing to men as to their plainest physical wants, except when he could allege that those wants were caused by some one's tyranny. But thousands have made the greatest impression by appealing to some vague dream of glory, or empire, or nationality. The ruder sort of men — that is, men at ONE stage of rudeness — will sacrifice all they hope for, all they have, THEMSELVES, for what is called an idea — for some attraction which seems to transcend reality, which aspires to elevate men by an interest higher, deeper, wider than that of ordinary life. But this order of men are uninterested in the plain, palpable ends of government; they do not prize them; they do not in the least comprehend how they should be attained. It is very natural, therefore, that the most useful parts of the structure of government should by no means be those which excite the most reverence. The elements which excite the most easy reverence will be the THEATRICAL elements — those which appeal to the senses, which claim to be embodiments of the greatest human ideas, which boast in some cases of far more than human origin. That which is mystic in its claims; that which is occult in its mode of action; that which is brilliant to the eye; that which is seen vividly for a moment, and then is seen no more; that which is hidden and unhidden; that which is specious, and yet interesting, palpable in its seeming, and yet professing to be more than palpable in its results; this, howsoever its form may change, or however we may define it or describe it, is the sort of thing — the only sort — which yet comes home to the mass of men. So far from the dignified parts of a constitution being necessarily the most useful, they are likely, according to outside presumption, to be the least so; for they are likely to be adjusted to the lowest orders — those likely to care least and judge worst about what is useful.

There is another reason which, in an old constitution like that of England, is hardly less important. The most intellectual of men are moved quite as much by the circumstances which they are used to as by their own will. The active voluntary part of a man is very small, and if it were not economized by a sleepy kind of habit, its results would be null. We could not do every day out of our own heads all we have to do. We should accomplish nothing for all our energies would be frittered away in minor attempts at petty improvement. One man, too, would go off from the known track in one direction, and one in another; so that when a crisis came requiring massed combination, no two men would be near enough to act together. It is the dull traditional habit of mankind that guides most men's actions, and is the steady frame in which each new artist must set the picture that he paints. And all this traditional part of human nature is, *ex vi termini*, most easily impressed and acted on by that which is handed down. Other things being equal, yesterday's institutions are by far the best for to-day; they are the most ready, the most influential, the most easy to get obeyed, the most likely to retain the reverence which they alone inherit, and which every other must win. The most imposing institutions of mankind are the oldest; and yet so changing is the world, so fluctuating are its needs, so apt to lose inward force, though retaining outward strength, are its best instruments, that we must not expect the oldest institutions to be now the most efficient. We must expect what is venerable to acquire influence because of its inherent dignity; but we must not expect it to use that influence so well as new creations apt for the modern world, instinct with its spirit, and fitting closely to its life.

The brief description of the characteristic merit of the English Constitution is, that its dignified parts are very complicated and somewhat imposing, very old and rather venerable; while its efficient part, at least when in great and critical action, is decidedly simple and rather modern. We have made, or rather stumbled on, a constitution

which—though full of every species of incidental defect, though of the worst WORKMANSHIP in all out-of-the-way matters of any constitution in the world—yet has two capital merits: it contains a simple efficient part which, on occasion, and when wanted, CAN work more simply, and easily, and better, than any instrument of government that has yet been tried; and it contains likewise historical, complex, august, theatrical parts, which it has inherited from a long past—which TAKE the multitude—which guide by an insensible but an omnipotent influence the associations of its subjects. Its essence is strong with the strength of modern simplicity; its exterior is august with the Gothic grandeur of a more imposing age. Its simple essence may, *mutatis mutandis*, be transplanted to many very various countries, but its august outside—what most men think it is—is narrowly confined to nations with an analogous history and similar political materials.

The efficient secret of the English Constitution may be described as the close union, the nearly complete fusion, of the executive and legislative powers. No doubt by the traditional theory, as it exists in all the books, the goodness of our constitution consists in the entire separation of the legislative and executive authorities, but in truth its merit consists in their singular approximation. The connecting link is THE CABINET. By that new word we mean a committee of the legislative body selected to be the executive body. The legislature has many committees, but this is its greatest. It chooses for this, its main committee, the men in whom it has most confidence. It does not, it is true, choose them directly; but it is nearly omnipotent in choosing them indirectly. A century ago the Crown had a real choice of ministers, though it had no longer a choice in policy. During the long reign of Sir R. Walpole he was obliged not only to manage Parliament, but to manage the palace. He was obliged to take care that some court intrigue did not expel him from his place. The nation then selected the English policy, but the Crown chose the English minis-

ters. They were not only in name, as now, but in fact, the Queen's servants. Remnants, important remnants, of this great prerogative still remain. The discriminating favor of William IV. made Lord Melbourne head of the Whig party when he was only one of several rivals. At the death of Lord Palmerston it is very likely that the Queen may have the opportunity of freely choosing between two, if not three statesmen. But, as a rule, the nominal prime minister is chosen by the Legislature, and the real prime minister for most purposes — the leader of the House of Commons — almost without exception is so. There is nearly always some one man plainly selected by the voice of the predominant party in the predominant House of the Legislature to head that party, and consequently to rule the nation. We have in England an elective first magistrate as truly as the Americans have an elective first magistrate. The Queen is only at the head of the dignified part of the Constitution. The prime minister is at the head of the efficient part. The Crown is, according to the saying, the "fountain of honor"; but the Treasury is the spring of business. Nevertheless, our first magistrate differs from the American. He is not elected directly by the people; he is elected by the representatives of the people. He is an example of "double election." The Legislature chosen, in name, to make laws, in fact finds its principal business in making and in keeping an executive.

The leading minister so selected has to choose his associates, but he only chooses among a charmed circle. The position of most men in Parliament forbids their being invited to the cabinet; the position of a few men ensures their being invited. Between the compulsory list whom he must take, and the impossible list whom he cannot take, the Prime Minister's independent choice in the formation of a cabinet is not very large; it extends rather to the division of the cabinet offices than to the choice of cabinet ministers. Parliament and the nation have pretty well settled who shall have the first places; but they have not discriminated with the same accuracy

which man shall have which place. The highest patronage of a prime minister is, of course, a considerable power, though it is exercised under close and imperative restrictions — though it is far less than it seems to be when stated in theory, or looked at from a distance.

The cabinet, in a word, is a board of control chosen by the Legislature, out of persons whom it trusts and knows, to rule the nation. The particular mode in which the English ministers are selected; the fiction that they are, in any political sense, the Queen's servants; the rule which limits the choice of the cabinet to the members of the Legislature — are accidents unessential to its definition — historical incidents separable from its nature. Its characteristic is that it should be chosen by the Legislature out of persons agreeable to and trusted by the Legislature. Naturally these are principally its own members — but they need not be exclusively so. A cabinet which included persons not members of the Legislative Assembly might still perform all useful duties. Indeed the peers, who constitute a large element in modern cabinets, are members, now-a-days, only of a subordinate assembly. The House of Lords still exercises several useful functions; but the ruling influence — the deciding faculty — has passed to what, using the language of old times, we still call the Lower House — to an assembly which, though inferior as a dignified institution, is superior as an efficient institution. A principal advantage of the House of Lords in the present age indeed consists in its thus acting as a RESERVOIR of cabinet ministers. Unless the composition of the House of Commons were improved, or unless the rules requiring cabinet ministers to be members of the Legislature were relaxed, it would undoubtedly be difficult to find, without the Lords, a sufficient supply of chief ministers. But the detail of the composition of a cabinet, and the precise method of its choice, are not to the purpose now. The first and cardinal consideration is the definition of a cabinet. We must not bewilder ourselves with the inseparable accidents until we know the necessary essence. A cabinet is a combining

committee — a HYPHEN which joins, a BUCKLE which fastens, the legislative part of the State to the executive part of the State. In its origin it belongs to the one, in its functions it belongs to the other.

The most curious point about the cabinet is that so very little is known about it. The meetings are not only secret in theory, but secret in reality. By the present practice, no official minute in all ordinary cases is kept of them. Even a private note is discouraged and disliked. The House of Commons, even in its most inquisitive and turbulent moments, would scarcely permit a note of a cabinet meeting to be read. No minister who respected the fundamental usages of political practice would attempt to read such a note. The committee which unites the law-making power to the law-executing power — which, by virtue of that combination, is, while it lasts and holds together, the most powerful body in the State — is a committee wholly secret. No description of it, at once graphic and authentic, has ever been given. It is said to be sometimes like a rather disorderly board of directors, where many speak and few listen — though no one knows.*

But a cabinet, though it is a committee of the Legislative Assembly, is a committee with a power which no assembly would — unless for historical accidents, and after happy experience — have been persuaded to entrust to any committee. It is a committee which can dissolve the assembly which appointed it; it is a committee with a suspensive veto — a committee with a power of appeal. Though appointed by one Parliament, it can appeal if it chooses to the next. Theoretically, indeed, the power to dissolve Parliament is entrusted to the sovereign only; and there are vestiges of doubt whether in ALL cases a

* It is SAID that at the end of the cabinet which agreed to propose a fixed duty on corn, Lord Melbourne put his back to the door, and said, «Now is it to lower the price of corn, or isn't it? It is not much matter which we say, but mind, we must all say THE SAME.» This is the most graphic story of a cabinet I ever heard, but I cannot vouch for its truth. Lord Melbourne's is a character about which men make stories.

sovereign is bound to dissolve Parliament when the cabinet asks him to do so. But neglecting such small and dubious exceptions, the cabinet which was chosen by one House of Commons has an appeal to the next House of Commons. The chief committee of the Legislature has the power of dissolving the predominant part of that legislature — that which at a crisis is the Supreme Legislature. The English system, therefore, is not an absorption of the executive power by the legislative power; it is a fusion of the two. Either the cabinet legislates and acts, or else it can dissolve. It is a creature, but it has the power of destroying its creators. It is an executive which can annihilate the Legislature, as well as an executive which is the nominee of the Legislature. It WAS made, but it CAN unmake; it was derivative in its origin, but it is destructive in its action.

This fusion of the legislative and executive functions may, to those who have not much considered it, seem but a dry and small matter, to be the latent essence and effectual secret of the English Constitution; but we can only judge of its real importance by looking at a few of its principal effects, and contrasting it very shortly with its great competitor, which seems likely, unless care be taken, to outstrip it in the progress of the world. That competitor is the Presidential system. The characteristic of it is that the President is elected from the people by one process, and the House of Representatives by another. The independence of the legislative and executive powers is the specific quality of Presidential Government, just as their fusion and combination is the precise principle of Cabinet Government.

First, compare the two in quiet times. The essence of a civilized age is, that administration requires the continued aid of legislation. One principal and necessary kind of legislation is TAXATION. The expense of civilized government is continually varying. It must vary if the government does its duty. The miscellaneous estimates of the English Government contain an inevitable medley of changing items. Education, prison discipline, art,

science, civil contingencies of a hundred kinds, require more money one year and less another. The expense of defense — the naval and military estimates — vary still more as the danger of attack seems more or less imminent, as the means of retarding such danger become more or less costly. If the persons who have to do the work are not the same as those who have to make the laws, there will be a controversy between the two sets of persons. The tax-imposers are sure to quarrel with the tax-requirers. The executive is crippled by not getting the laws it needs, and the Legislature is spoiled by having to act without responsibility: the executive becomes unfit for its name since it cannot execute what it decides on; the Legislature is demoralized by liberty, by taking decisions of which others (and not itself) will suffer the effects.

In America so much has this difficulty been felt that a semi-connection has grown up between the Legislature and the executive. When the Secretary of the Treasury of the Federal Government wants a tax he consults upon it with the Chairman of the Financial Committee of Congress. He cannot go down to Congress himself and propose what he wants; he can only write a letter and send it. But he tries to get a chairman of a finance committee who likes his tax; through that chairman he tries to persuade the committee to recommend such tax; by that committee he tries to induce the house to adopt that tax. But such a chain of communications is liable to continual interruptions; it may suffice for a single tax on a fortunate occasion, but will scarcely pass a complicated budget — we do not say in a war or a rebellion — we are now comparing the Cabinet system and the Presidential system in quiet times — but in times of financial difficulty. Two clever men never exactly agreed about a budget. We have by present practice an Indian Chancellor of the Exchequer talking English finance at Calcutta, and an English one talking Indian finance in England. But the figures are never the same, and the views of policy are rarely the same. One most angry

controversy has amused the world, and probably others scarcely less interesting are hidden in the copious stores of our Anglo-Indian correspondence.

But relations something like these must subsist between the head of a finance committee in the legislature, and a finance minister in the executive.* They are sure to quarrel, and the result is sure to satisfy neither. And when the taxes do not yield as they were expected to yield, who is responsible? Very likely the secretary of the treasury could not persuade the chairman — very likely the chairman could not persuade his committee — very likely the committee could not persuade the assembly. Whom, then, can you punish — whom can you abolish — when your taxes run short? There is nobody save the Legislature, a vast miscellaneous body difficult to punish, and the very persons to inflict the punishment.

Nor is the financial part of administration the only one which requires in a civilized age the constant support and accompaniment of facilitating legislation. All administration does so. In England, on a vital occasion, the cabinet can compel legislation by the threat of resignation, and the threat of dissolution; but neither of these can be used in a presidential state. There the Legislature cannot be dissolved by the executive government; and it does not heed a resignation, for it has not to find the successor. Accordingly, when a difference of opinion arises, the legislature is forced to fight the executive, and the executive is forced to fight the legislative; and so very likely they contend to the conclusion of their respective terms.† There is, indeed, one condition of things in which this description, though still approximately true, is, nevertheless, not exactly true; and that is, when there is nothing to fight about. Before the rebellion in

* It is worth observing that even during the short existence of the Confederate Government these evils distinctly showed themselves. Almost the last incident at the Richmond Congress was an angry financial correspondence with Jefferson Davis.

† I leave this passage to stand as it was written, just after the assassination of Mr. Lincoln, and when every one said Mr. Johnson would be very hostile to the South.

America, owing to the vast distance of other States, and the favorable economical condition of the country, there were very few considerable objects of contention; but if that government had been tried by the English legislation of the last thirty years, the discordant action of the two powers, whose constant co-operation is essential to the best government, would have shown itself much more distinctly.

Nor is this the worst. Cabinet government educates the nation; the presidential does not educate it, and may corrupt it. It has been said that England invented the phrase, "Her Majesty's Opposition"; that it was the first government which made a criticism of administration as much a part of the polity as administration itself. This critical opposition is the consequence of cabinet government. The great scène of debate, the great engine of popular instruction and political controversy, is the Legislative Assembly. A speech there by an eminent statesman, a party movement by a great political combination, are the best means yet known for arousing, enlivening, and teaching a people. The cabinet system ensures such debates, for it makes them the means by which statesmen advertise themselves for future and confirm themselves in present governments. It brings forward men eager to speak, and gives them occasions to speak. The deciding catastrophes of cabinet governments are critical divisions preceded by fine discussions. Everything which is worth saying, everything which ought to be said, most certainly WILL be said. Conscientious men think they ought to persuade others; selfish men think they would like to obtrude themselves. The nation is forced to hear two sides — all the sides, perhaps, of that which most concerns it. And it likes to hear — it is eager to know. Human nature despises long arguments which come to nothing — heavy speeches which precede no motion — abstract disquisitions which leave visible things where they were. But all men heed great results, and a change of government is a great result. It has a hundred ramifications; it runs through society; it gives hope

to many, and it takes away hope from many. It is one of those marked events which, by its magnitude and its melodrama, impress men even too much. And debates which have this catastrophe at the end of them — or may so have it — are sure to be listened to, and sure to sink deep into the national mind.

Travelers even in the Northern States of America, the greatest and best of presidential countries, have noticed that the nation was "not specially addicted to politics"; that they have not a public opinion finished and chastened as that of the English has been finished and chastened. A great many hasty writers have charged this defect on the "Yankee race," on the Anglo-American character; but English people, if they had no motive to attend to politics, certainly would not attend to politics. At present there is BUSINESS in their attention. They assist at the determining crisis; they assist or help it. Whether the government will go out or remain is determined by the debate, and by the division in Parliament. And the opinion out of doors, the secret pervading disposition of society, has a great influence on that division. The nation feels that its judgment is important, and it strives to judge. It succeeds in deciding because the debates and the discussions give it the facts and the arguments. But under a presidential government a nation has, except at the electing moment, no influence; it has not the ballot-box before it; its virtue is gone, and it must wait till its instant of despotism again returns. It is not incited to form an opinion like a nation under a cabinet government; nor is it instructed like such a nation. There are doubtless debates in the Legislature, but they are prologues without a play. There is nothing of a catastrophe about them; you cannot turn out the government. The prize of power is not in the gift of the Legislature, and no one cares for the Legislature. The executive, the great centre of power and place, sticks irremovable; you cannot change it in any event. The teaching apparatus which has educated our public mind, which prepares our reso-

lutions, which shapes our opinions, does not exist. No presidential country needs to form daily, delicate opinions, or is helped in forming them.

It might be thought that the discussions in the press would supply the deficiencies in the Constitution; that by a reading people especially, the conduct of their government would be as carefully watched, that their opinions about it would be as consistent, as accurate, as well considered, under a presidential as under a cabinet polity. But the same difficulty oppresses the press which oppresses the Legislature. It can DO NOTHING. It cannot change the administration; the executive was elected for such and such years, and for such and such years it must last. People wonder that so literary a people as the Americans — a people who read more than any people who ever lived, who read so many newspapers — should have such bad newspapers. The papers are not so good as the English, because they have not the same motive to be good as the English papers. At a political "crisis," as we say — that is, when the fate of an administration is unfixed, when it depends on a few votes, yet unsettled, upon a wavering and veering opinion — effective articles in great journals become of essential moment. The "Times" has made many ministries. When, as of late, there has been a long continuance of divided parliaments, of governments which were without "brute voting power," and which depended on intellectual strength, the support of the most influential organ of English opinion has been of critical moment. If a Washington newspaper could have turned out Mr. Lincoln, there would have been good writing and fine argument in the Washington newspapers. But the Washington newspapers can no more remove a president during his term of place than the "Times" can remove a lord mayor during his year of office. Nobody cares for a debate in Congress which "comes to nothing," and no one reads long articles which have no influence on events. The Americans glance at the heads of news, and through the paper. They do not enter upon a discussion. They do not

THINK of entering upon a discussion which would be useless.

After saying that the division of the Legislature and the executive in presidential governments weakens the legislative power, it may seem a contradiction to say that it also weakens the executive power. But it is not a contradiction. The division weakens the whole aggregate force of government — the entire imperial power; and therefore it weakens both its halves. The executive is weakened in a very plain way. In England a strong cabinet can obtain the concurrence of the Legislature in all acts which facilitate its administration; it is itself, so to say, the Legislature. But a president may be hampered by the Parliament, and is likely to be hampered. The natural tendency of the members of every Legislature is to make themselves conspicuous. They wish to gratify an ambition laudable or blamable; they wish to promote the measures they think best for the public welfare; they wish to make their WILL felt in great affairs. All these mixed motives urge them to oppose the executive. They are embodying the purposes of others if they aid; they are advancing their own opinions if they defeat: they are first if they vanquish; they are auxiliaries if they support. The weakness of the American executive used to be the great theme of all critics before the Confederate rebellion. Congress and committees of Congress of course impeded the executive when there was no coercive public sentiment to check and rule them.

But the presidential system not only gives the executive power an antagonist in the legislative power, and so makes it weaker; it also enfeebles it by impairing its intrinsic quality. A cabinet is elected by a legislature; and when that legislature is composed of fit persons, that mode of electing the executive is the very best. It is a case of secondary election, under the only conditions in which secondary election is preferable to primary. Generally speaking, in an electioneering country (I mean in a country full of political life, and used to the manipulation of popular institutions), the election of candidates

to elect candidates is a farce. The Electoral College of America is so. It was intended that the deputies when assembled should exercise a real discretion, and by independent choice select the president. But the primary electors take too much interest. They only elect a deputy to vote for Mr. Lincoln or Mr. Breckenridge, and the deputy only takes a ticket, and drops that ticket in an urn. He never chooses or thinks of choosing. He is but a messenger — a transmitter, the real decision is in those who chose him — who chose him because they knew what he would do.

It is true that the British House of Commons is subject to the same influences. Members are mostly, perhaps, elected because they will vote for a particular ministry, rather than for purely legislative reasons. But — and here is the capital distinction — the functions of the House of Commons are important and CONTINUOUS. It does not, like the Electoral College in the United States, separate when it has elected its ruler; it watches, legislates, seats and unseats ministries, from day to day. Accordingly it is a REAL electoral body. The Parliament of 1857, which more than any other Parliament of late years, was a Parliament elected to support a particular premier — which was chosen, as Americans might say, upon the "Palmerston ticket" — before it had been in existence two years, dethroned Lord Palmerston. Though selected in the interest of a particular ministry, it in fact destroyed that ministry.

A GOOD parliament, too, is a capital choosing body. If it is fit to make laws for a country, its majority ought to represent the general average intelligence of that country; its various members ought to represent the various special interests, special opinions, special prejudices, to be found in that community. There ought to be an advocate for every particular sect, and a vast neutral body of no sect — homogeneous and judicial, like the nation itself. Such a body, when possible, is the best selecter of executives that can be imagined. It is full of political activity; it is close to political life; it feels the responsi-

bility of affairs which are brought as it were to its threshold; it has as much intelligence as the society in question chances to contain. It is, what Washington and Hamilton strove to create, an electoral college of the picked men of the nation.

The best mode of appreciating its advantages is to look at the alternative. The competing constituency is the nation itself, and this is, according to theory and experience, in all but the rarest cases, a bad constituency. Mr. Lincoln, at his second election, being elected when all the Federal States had set their united hearts on one single object, was voluntarily re-elected by an actually choosing nation. He embodied the object in which every one was absorbed. But this is almost the only presidential election of which so much can be said. In almost all cases the President is chosen by a machinery of caucuses and combinations too complicated to be perfectly known, and too familiar to require description. He is not the choice of the nation, he is the choice of the wire-pullers. A very large constituency in quiet times is the necessary, almost the legitimate, subject of electioneering management: a man cannot know that he does not throw his vote away except he votes as part of some great organization; and if he votes as a part, he abdicates his electoral function in favor of the managers of that association. The nation, even if it chose for itself, would, in some degree, be an unskilled body; but when it does not choose for itself, but only as latent agitators wish, it is like a large, lazy man, with a small, vicious mind,—it moves slowly and heavily, but it moves at the bidding of a bad intention; it "means LITTLE, but it means that little ILL."

And, as the nation is less able to choose than a parliament, so it has worse people to choose out of. The American legislators of the last century have been much blamed for not permitting the ministers of the President to be members of the Assembly; but, with reference to the specific end which they had in view, they saw clearly and decided wisely. They wished to keep "the legislative branch absolutely distinct from the executive branch";

they believed such a separation to be essential to a good constitution; they believed such a separation to exist in the English, which the wisest of them thought the best constitution. And, to the effectual maintenance of such a separation, the exclusion of the President's ministers from the Legislature is essential. If they are not excluded they become the executive, they eclipse the President himself. A legislative chamber is greedy and covetous; it acquires as much, it concedes as little as possible. The passions of its members are its rulers; the law-making faculty, the most comprehensive of the imperial faculties, is its instrument; it will TAKE the administration if it can take it. Tried by their own aims, the founders of the United States were wise in excluding the ministers from Congress.

But though this exclusion is essential to the presidential system of government, it is not for that reason a small evil. It causes the degradation of public life. Unless a member of the Legislature be sure of something more than speech, unless he is incited by the hope of action, and chastened by the chance of responsibility, a first-rate man will not care to take the place, and will not do much if he does take it. To belong to a debating society adhering to an executive (and this is no inapt description of a congress under a presidential constitution) is not an object to stir a noble ambition, and is a position to encourage idleness. The members of a parliament excluded from office can never be comparable, much less equal, to those of a parliament not excluded from office. The presidential government, by its nature, divides political life into two halves, an executive half and a legislative half; and, by so dividing it, makes neither half worth a man's having — worth his making it a continuous career — worthy to absorb, as cabinet government absorbs, his whole soul. The statesmen from whom a nation chooses under a presidential system are much inferior to those from whom it chooses under a cabinet system, while the selecting apparatus is also far less discerning.

All these differences are more important at critical

periods, because government itself is more important. A formed public opinion, a respectable, able, and disciplined legislature, a well-chosen executive, a Parliament and an administration not thwarting each other, but co-operating with each other, are of greater consequence when great affairs are in progress than when small affairs are in progress — when there is much to do than when there is little to do. But in addition to this, a parliamentary or cabinet constitution possesses an additional and special advantage in very dangerous times. It has what we may call a reserve of power fit for and needed by extreme exigencies.

The principle of popular government is that the supreme power, the determining efficacy in matters political, resides in the people — not necessarily or commonly in the whole people, in the numerical majority, but in a CHOSEN people, a picked and selected people. It is so in England; it is so in all free countries. Under a cabinet constitution at a sudden emergency this people can choose a ruler for the occasion. It is quite possible and even likely that he would not be ruler BEFORE the occasion. The great qualities, the imperious will, the rapid energy, the eager nature fit for a great crisis are not required — are impediments — in common times. A Lord Liverpool is better in every-day politics than a Chatham — a Louis Philippe far better than a Napoleon. By the structure of the world we often want, at the sudden occurrence of a grave tempest, to change the helmsman — to replace the pilot of the calm by the pilot of the storm. In England we have had so few catastrophes since our constitution attained maturity, that we hardly appreciate this latter excellence. We have not needed a Cavour to rule a revolution — a representative man above all men fit for a great occasion, and by a natural, legal mode brought in to rule. But even in England, at what was the nearest to a great sudden crisis which we have had of late years — at the Crimean difficulty — we used this inherent power. We abolished the Aberdeen cabinet, the ablest we have had, perhaps, since the Reform Act

—a cabinet not only adapted, but eminently adapted, for every sort of difficulty save the one it had to meet—which abounded in pacific discretion, and was wanting only in the "dæmonic element;" we chose a statesman who had the sort of merit then wanted, who, when he feels the steady power of England behind him, will advance without reluctance, and will strike without restraint. As was said at the time, "We turned out the Quaker, and put in the pugilist."

But under a Presidential Government you can do nothing of the kind. The American Government calls itself a government of the supreme people: but at a quick crisis, the time when a sovereign power is most needed, you cannot FIND the supreme people. You have got a Congress elected for one fixed period, going out perhaps by fixed installments, which cannot be accelerated or retarded—you have a President chosen for a fixed period, and immovable during that period; all the arrangements are for STATED times. There is no ELASTIC element, everything is rigid, specified, dated. Come what may, you can quicken nothing and can retard nothing. You have bespoken your government in advance, and whether it suits you or not, whether it works well or works ill, whether it is what you want or not, by law you must keep it. In a country of complex foreign relations it would mostly happen that the first and most critical year of every war would be managed by a peace premier, and the first and most critical years of peace by a war premier. In each case the period of transition would be irrevocably governed by a man selected not for what he was to introduce, but what he was to change—for the policy he was to abandon, not for the policy he was to administer.

The whole history of the American civil war—a history which has thrown an intense light on the working of a Presidential Government at the time when government is most important—is but a vast continuous commentary on these reflections. It would, indeed, be absurd to press against Presidential Government AS SUCH the singular

defect by which Vice-President Johnson has become President — by which a man elected to a sinecure is fixed in what is for the moment the most important administrative part in the political world. This defect, though most characteristic of the expectations* of the framers of the Constitution and of its working, is but an accident of this particular case of Presidential government and no necessary ingredient in that government itself. But the first election of Mr. Lincoln is liable to no such objection. It was a characteristic instance of the natural working of such a government upon a great occasion. And what was that working? It may be summed up — it was government by an UNKNOWN quantity. Hardly any one in America had any living idea what Mr. Lincoln was like, or any definite notion what he would do. The leading statesmen under the system of Cabinet government are not only household words, but household IDEAS. A conception, not, perhaps, in all respects a true but a most vivid conception, what Mr. Gladstone is like, or what Lord Palmerston is like, runs through society. We have simply no notion what it would be to be left with the visible sovereignty in the hands of an unknown man. The notion of employing a man of unknown smallness at a crisis of unknown greatness is to our minds simply ludicrous. Mr. Lincoln, it is true, happened to be a man, if not of eminent ability, yet of eminent justness. There was an inner depth of Puritan nature which came out under suffering, and was very attractive. But success in a lottery is no argument for lotteries. What were the chances against a person of Lincoln's antecedents, elected as he was, proving to be what he was?

Such an incident is, however, natural to a Presidential government. The President is elected by processes which forbid the election of known men, except at peculiar con-

* The framers of the Constitution expected that the vice-president would be elected by the Electoral College as the second wisest man in the country. The vice-presidentship being a sinecure, a second-rate man agreeable to the wire-pullers is always smuggled in. The chance of succession to the presidentship is too distant to be thought of.

junctures, and in moments when public opinion is excited and despotic; and consequently, if a crisis comes upon us soon after he is elected, inevitably we have government by an unknown quantity — the superintendence of that crisis by what our great satirist would have called "Statesman X." Even in quiet times, government by a President is, for the several various reasons which have been stated, inferior to government by a cabinet; but the difficulty of quiet times is nothing as compared with the difficulty of unquiet times. The comparative deficiencies of the regular, common operation of a Presidential government are far less than the comparative deficiencies in time of sudden trouble — the want of elasticity, the impossibility of a dictatorship, the total absence of a REVOLUTIONARY RESERVE.

This contrast explains why the characteristic quality of cabinet governments — the fusion of the executive power with the legislative power — is of such cardinal importance. I shall proceed to show under what form and with what adjuncts it exists in England.

II.

THE MONARCHY.

The use of the Queen, in a dignified capacity, is incalculable. Without her in England, the present English Government would fail and pass away. Most people when they read that the Queen walked on the slopes at Windsor — that the Prince of Wales went to the Derby — have imagined that too much thought and prominence were given to little things. But they have been in error; and it is nice to trace how the actions of a retired widow and an unemployed youth become of such importance.

The best reason why Monarchy is a strong government is, that it is an intelligible government. The mass of mankind understand it, and they hardly anywhere in the world understand any other. It is often said that men are ruled by their imaginations; but it would be truer to say they are governed by the weakness of their imaginations. The nature of a constitution, the action of an assembly, the play of parties, the unseen formation of a guiding opinion, are complex facts, difficult to know, and easy to mistake. But the action of a single will, the fiat of a single mind, are easy ideas: anybody can make them out, and no one can ever forget them. When you put before the mass of mankind the question, "Will you be governed by a king, or will you be governed by a constitution?" the inquiry comes out thus — "Will you be governed in a way you understand, or will you be governed in a way you do not understand?" The issue was put to the French people; they were asked, "Will you be governed by Louis Napoleon, or will you be governed by an assembly?" The French people said, "We will

be governed by the one man we can imagine, and not by the many people we cannot imagine."

The best mode of comprehending the nature of the two governments, is to look at a country in which the two have within a comparatively short space of years succeeded each other.

"The political conditions," says Mr. Grote, "which Grecian legend everywhere presents to us, is in its principal features strikingly different from that which had become universally prevalent among the Greeks in the time of the Peloponnesian war. Historical oligarchy, as well as democracy, agreed in requiring a certain established system of government, comprising the three elements of specialized functions, temporary functionaries, and ultimate responsibility (under some forms or other) to the mass of qualified citizens — either a Senate or an Ecclesia, or both. There were, of course, many and capital distinctions between one government and another, in respect to the qualifications of the citizens, the attributes and efficiency of the general assembly, the admissibility to power, etc.; and men might often be dissatisfied with the way in which these questions were determined in their own city. But in the mind of every man, some determining rule or system — something like what in modern times is called a CONSTITUTION — was indispensable to any government entitled to be called legitimate, or capable of creating in the mind of a Greek a feeling of moral obligation to obey it. The functionaries who exercise authority under it might be more or less competent or popular; but his personal feelings toward them were commonly lost in his attachment or aversion to the general system. If any energetic man could by audacity or craft break down the Constitution, and render himself permanent ruler according to his own will and pleasure, even though he might govern well, he could never inspire the people with any sentiment of duty toward him: his sceptre was illegitimate from the beginning, and even the taking of his life, far from being interdicted by that moral feeling which condemned the

shedding of blood in other cases, was considered meritorious: he could not even be mentioned in the language except by a name (τύραννος, DESPOT) which branded him as an object of mingled fear and dislike.

"If we carry our eyes back from historical to legendary Greece, we find a picture the reverse of what has been here sketched. We discern a government in which there is little or no scheme or system, still less any idea of responsibility to the governed, but in which the mainspring of obedience on the part of the people consists in their personal feeling and reverence toward the chief. We remark first and foremost, the King; next, a limited number of subordinate kings or chiefs; afterward, the mass of armed freemen, husbandmen, artisans, freebooters, etc.; lowest of all, the free laborers for hire and the bought slaves. The King is not distinguished by broad, or impassable boundary from the other chiefs, to each of whom the title BASILEUS is applicable as well as to himself: his supremacy has been inherited from his ancestors, and passes by inheritance, as a general rule, to his eldest son, having been conferred upon the family as a privilege by the favor of Zeus. In war he is the leader foremost in personal prowess, and directing all military movements; in peace, he is the general protector of the injured and oppressed; he offers up moreover those public prayers and sacrifices which are intended to obtain for the whole people the favor of the gods. An ample domain is assigned to him as appurtenance of his lofty position, and the produce of his fields and his cattle is consecrated in part to an abundant, though rude hospitality. Moreover he receives frequent presents, to avert his enmity, to conciliate his favor, or to buy off his exactions; and when plunder is taken from the enemy, a large previous share, comprising probably the most alluring female captive, is reserved for him apart from the general distribution.

"Such is the position of the King in the heroic times of Greece — the only person (if we except the heralds and priests, each both special and subordinate) who is

then presented to us as clothed with any individual authority — the person by whom all the executive functions, then few in number, which the society requires, are either performed or directed. His personal ascendancy — derived from divine countenance bestowed both upon himself individually and upon his race, and probably from accredited divine descent — is the salient feature in the picture: the people hearken to his voice, embrace his propositions, and obey his orders: not merely resistance, but even criticism upon his acts, is generally exhibited in an odious point of view, and is indeed never heard of except from some one or more of the subordinate princes."

The characteristic of the English Monarchy is that it retains the feelings by which the heroic kings governed their rude age, and has added the feelings by which the constitutions of later Greece ruled in more refined ages. We are a more mixed people than the Athenians, or probably than any political Greeks. We have progressed more unequally. The slaves in ancient times were a separate order; not ruled by the same laws, or thoughts, as other men. It was not necessary to think of them in making a constitution: it was not necessary to improve them in order to make a constitution possible. The Greek legislator had not to combine in his polity men like the laborers of Somersetshire, and men like Mr. Grote. He had not to deal with a community in which primitive barbarism lay as a recognized basis to acquired civilization. We have. We have no slaves to keep down by special terrors and independent legislation. But we have whole classes unable to comprehend the idea of a constitution — unable to feel the least attachment to impersonal laws. Most do indeed vaguely know that there are some other institutions besides the Queen, and some rules by which she governs. But a vast number like their minds to dwell more upon her than upon anything else, and therefore she is inestimable. A Republic has only difficult ideas in government; a Constitutional Monarchy has an easy idea too; it has a comprehensible ele-

ment for the vacant many, as well as complex laws and notions for the inquiring few.

A FAMILY on the throne is an interesting idea also. It brings down the pride of sovereignty to the level of petty life. No feeling could seem more childish than the enthusiasm of the English at the marriage of the Prince of Wales. They treated as a great political event, what, looked at as a matter of pure business, was very small indeed. But no feeling could be more like common human nature as it is, and as it is likely to be. The women — one half the human race at least — care fifty times more for a marriage than a ministry. All but a few cynics like to see a pretty novel touching for a moment the dry scenes of the grave world. A princely marriage is the brilliant edition of a universal fact, and as such, it rivets mankind. We smile at the "Court Circular"; but remember how many people read the "Court Circular"! Its use is not in what it says, but in those to whom it speaks. They say that the Americans were more pleased at the Queen's letter to Mrs. Lincoln, than at any act of the English Government. It was a spontaneous act of intelligible feeling in the midst of confused and tiresome business. Just so a royal family sweetens politics by the seasonable addition of nice and pretty events. It introduces irrelevant facts into the business of government, but they are facts which speak to "men's bosoms" and employ their thoughts.

To state the matter shortly, Royalty is a government in which the attention of the nation is concentrated on one person doing interesting actions. A Republic is a government in which that attention is divided between many, who are all doing uninteresting actions. Accordingly, so long as the human heart is strong and the human reason weak, Royalty will be strong because it appeals to diffused feeling, and Republics weak because they appeal to the understanding.

Secondly, the English Monarchy strengthens our government with the strength of religion. It is not easy to say why it should be so. Every instructed theologian

would say that it was the duty of a person born under a Republic as much to obey that Republic as it is the duty of one born under a Monarchy to obey the Monarch. But the mass of the English people do not think so; they agree with the oath of allegiance; they say it is their duty to obey the "Queen;" and they have but hazy notions as to obeying laws without a queen. In former times, when our Constitution was incomplete, this notion of local holiness in one part was mischievous. All parts were struggling, and it was necessary each should have its full growth. But superstition said one should grow where it would, and no other part should grow without its leave. The whole cavalier party said it was their duty to obey the King, whatever the king did. There was to be "passive obedience" to him, and there was no religious obedience due to any one else. He was the "Lord's anointed," and no one else had been anointed at all. The Parliament, the laws, the press were human institutions, but the Monarchy was a Divine institution. An undue advantage was given to a part of the Constitution, and therefore the progress of the whole was stayed.

After the Revolution this mischievous sentiment was much weaker. The change of the line of sovereigns was at first conclusive. If there was a mystic right in any one, that right was plainly in James the II.; if it was an English duty to obey any one, whatever he did, he was the person to be so obeyed; if there was an inherent inherited claim in any king, it was in the Stuart king to whom the crown had come by descent, and not in the Revolution king to whom it had come by vote of Parliament. All through the reign of William III. there was (in common speech) one king whom man had made, and another king whom God had made. The king who ruled had no consecrated loyalty to build upon; although he ruled in fact, according to sacred theory there was a king in France who ought to rule. But it was very hard for the English people, with their plain sense and slow imagination, to keep up a strong senti-

ment of veneration for a foreign adventurer. He lived under the protection of a French king; what he did was commonly stupid, and what he left undone was very often wise. As soon as Queen Anne began to reign there was a change of feeling; the old sacred sentiment began to cohere about her. There were indeed difficulties which would have baffled most people; but an Englishman whose heart is in a matter is not easily baffled. Queen Anne had a brother living and a father living, and by every rule of descent, their right was better than hers. But many people evaded both claims. They said James II. had "run away," and so abdicated, though he only ran away because he was in duress and was frightened, and though he claimed the allegiance of his subjects day by day. The Pretender, was said, was not legitimate, though the birth was proved by evidence which any Court of Justice would have accepted. The English people were "out of" a sacred monarch and so they tried very hard to make a new one. Events, however, were too strong for them. They were ready and eager to take Queen Anne as the stock of a new dynasty; they were ready to ignore the claims of her father and the claims of her brother, but they could not ignore the fact that at the critical period she had no children. She had once had thirteen, but they all died in her lifetime, and it was necessary either to revert to the Stuarts or to make a new king by Act of Parliament.

According to the Act of Settlement passed by the Whigs, the crown was settled on the descendants of the "Princess Sophia" of Hanover, a younger daughter of a daughter of James I. There were before her James II., his son, the descendants of a daughter of Charles I., and elder children of her own mother. But the Whigs passed these over because they were Catholics, and selected the Princess Sophia, who, if she was anything, was a Protestant. Certainly this selection was statesmanlike, but it could not be very popular. It was quite impossible to say that it was the duty of the English people to obey the House of Hanover upon any principles which do not

concede the right of the people to choose their rulers, and which do not degrade monarchy from its solitary pinnacle of majestic reverence, and make it one only among many expedient institutions. If a king is a useful public functionary who may be changed, and in whose place you may make another, you cannot regard him with mystic awe and wonder: and if you are bound to worship him, of course you cannot change him. Accordingly, during the whole reigns of George I. and George II. the sentiment of religious loyalty altogether ceased to support the Crown. The prerogative of the king had no strong party to support it; the Tories, who naturally would support it disliked the actual king; and the Whigs, according to their creed, disliked the king's office. Until the accession of George III. the most vigorous opponents of the Crown were the country gentlemen, its natural friends, and the representatives of quiet rural districts, where loyalty is mostly to be found, if anywhere. But after the accession of George III. the common feeling came back to the same point as in Queen Anne's time. The English were ready to take the new young prince as the beginning of a sacred line of sovereigns, just as they had been willing to take an old lady who was the second cousin of his great-great-grandmother. So it is now. If you ask the immense majority of the Queen's subjects by what right she rules, they would never tell you that she rules by Parliamentary right, by virtue of 6 Anne, c. 7. They will say she rules by "God's grace"; they believe that they have a mystic obligation to obey her. When her family came to the Crown it was a sort of treason to maintain the inalienable right of lineal sovereignty, for it was equivalent to saying that the claim of another family was better than hers; but now in the strange course of human events, that very sentiment has become her surest and best support.

But it would be a great mistake to believe that at the accession of George III. the instinctive sentiment of hereditary loyalty at once became as useful as now. It began to be powerful, but it hardly began to be useful.

There was so much harm done by it as well as so much good, that it is quite capable of being argued whether on the whole it was beneficial or hurtful. Throughout the greater part of his life George III. was a kind of "consecrated obstruction." Whatever he did had a sanctity different from what any one else did, and it perversely happened that he was commonly wrong. He had as good intentions as any one need have, and he attended to the business of his country, as a clerk with his bread to get attends to the business of his office. But his mind was small, his education limited, and he lived in a changing time. Accordingly he was always resisting what ought to be, and prolonging what ought not to be. He was the sinister but sacred assailant of half his ministries; and when the French revolution excited the horror of the world, and proved democracy to be "impious," the piety of England concentrated upon him, and gave him tenfold strength. The monarchy by its religious sanction now confirms all our political order; in George III.'s time it confirmed little except itself. It gives now a vast strength to the entire constitution, by enlisting on its behalf the credulous obedience of enormous masses; then it lived aloof, absorbed all the holiness into itself, and turned over all the rest of the polity to the coarse justification of bare expediency.

A principal reason why the monarchy so well consecrates our whole state is to be sought in the peculiarity many Americans and many utilitarians smile at. They laugh at this "extra," as the Yankee called it, at the solitary transcendent element. They quote Napoleon's saying, "that he did not wish to be fatted in idleness," when he refused to be grand elector in Sièyes's constitution, which was an office copied, and M. Thiers says, well copied, from constitutional monarchy. But such objections are wholly wrong. No doubt it was absurd enough in the Abbé Sièyes to propose that a new institution, inheriting no reverence, and made holy by no religion, should be created to fill the sort of post occupied by a constitutional king in nations of monarchical history.

Such an institution, far from being so august as to spread reverence around it, is too novel and artificial to get reverence for itself; if, too, the absurdity could anyhow be augmented, it was so by offering an office of inactive uselessness and pretended sanctity to Napoleon, the most active man in France, with the greatest genius for business, only not sacred, and exclusively fit for action. But the blunder of Sièyes brings the excellence of real monarchy to the best light. When a monarch can bless, it is best that he should not be touched. It should be evident that he does no wrong. He should not be brought too closely to real measurement. He should be aloof and solitary. As the functions of English royalty are for the most part latent, it fulfils this condition. It seems to order, but it never seems to struggle. It is commonly hidden like a mystery, and sometimes paraded like a pageant, but in neither case is it contentious. The nation is divided into parties, but the Crown is of no party. Its apparent separation from business is that which removes it both from enmities and from desecration, which preserves its mystery, which enables it to combine the affection of conflicting parties — to be a visible symbol of unity to those still so imperfectly educated as to need a symbol.

Thirdly. The Queen is the head of our society. If she did not exist the Prime Minister would be the first person in the country. He and his wife would have to receive foreign ministers, and occasionally foreign princes, to give the first parties in the country; he and she would be at the head of the pageant of life; they would represent England in the eyes of foreign nations; they would represent the Government of England in the eyes of the English.

It is very easy to imagine a world in which this change would not be a great evil. In a country where people did not care for the outward show of life, where the genius of the people was untheatrical, and they exclusively regarded the substance of things, this matter would be trifling. Whether Lord and Lady Derby received the

foreign ministers, or Lord and Lady Palmerston, would be a matter of indifference; whether they gave the nicest parties would be important only to the persons at those parties. A nation of unimpressible philosophers would not care at all how the externals of life were managed. Who is the showman is not material unless you care about the show.

But of all nations in the world the English are perhaps the least a nation of pure philosophers. It would be a very serious matter to us to change every four or five years the visible head of our world. We are not now remarkable for the highest sort of ambition; but we are remarkable for having a great deal of the lower sort of ambition and envy. The House of Commons is thronged with people who get there merely for "social purposes," as the phrase goes; that is, that they and their families may go to parties else impossible. Members of Parliament are envied by thousands merely for this frivolous glory, as a thinker calls it. If the highest post in conspicuous life were thrown open to public competition, this low sort of ambition and envy would be fearfully increased. Politics would offer a prize too dazzling for mankind; clever base people would strive for it, and stupid base people would envy it. Even now a dangerous distinction is given by what is exclusively called public life. The newspapers describe daily and incessantly a certain conspicuous existence; they comment on its characters, recount its details, investigate its motives, anticipate its course. They give a precedent and a dignity to that world which they do not give to any other. The literary world, the scientific world, the philosophic world, not only are not comparable in dignity to the political world, but in comparison are hardly worlds at all. The newspaper makes no mention of them, and could not mention them. As are the papers, so are the readers; they, by irresistible sequence and association, believe that those people who constantly figure in the papers are cleverer, abler, or at any rate, somehow higher. than other people. "I wrote books,"

we heard of a man saying, "for twenty years, and I was nobody; I got into Parliament, and before I had taken my seat I had become somebody." English politicians are the men who fill the thoughts of the English public; they are the actors on the scene, and it is hard for the admiring spectators not to believe that the admired actor is greater than themselves. In this present age and country it would be very dangerous to give the slightest addition to a force already perilously great. If the highest social rank was to be scrambled for in the House of Commons, the number of social adventurers there would be incalculably more numerous, and indefinitely more eager.

A very peculiar combination of causes has made this characteristic one of the most prominent in English society. The Middle Ages left all Europe with a social system headed by courts. The government was made the head of all society, all intercourse, and all life; everything paid allegiance to the sovereign, and everything ranged itself round the sovereign — what was next to be greatest, and what was farthest least. The idea that the head of the government is the head of society is so fixed in the ideas of mankind that only a few philosophers regard it as historical and accidental, though when the matter is examined, that conclusion is certain and even obvious.

In the first place, society as society does not naturally need a head at all. Its constitution, if left to itself, is not monarchical, but aristocratical. Society, in the sense we are now talking of, is the union of people for amusement and conversation. The making of marriages goes on in it, as it were, incidentally, but its common and main concern is talking and pleasure. There is nothing in this which needs a single supreme head; it is a pursuit in which a single person does not of necessity dominate. By nature it creates an "upper ten thousand"; a certain number of persons and families possessed of equal culture, and equal faculties, and equal spirit, get to be on a level — and that level a high level. By boldness,

by cultivation, by "social science" they raise themselves above others; they become the "first families," and all the rest come to be below them. But they tend to be much about a level among one another; no one is recognized by all or by many others as superior to them all. This is society as it grew up in Greece or Italy, as it grows up now in any American or colonial town. So far from the notion of a "head of society" being a necessary notion, in many ages it would scarcely have been an intelligible notion. You could not have made Socrates understand it. He would have said, "If you tell me that one of my fellows is chief magistrate, and that I am bound to obey him, I understand you, and you speak well; or that another is a priest, and that he ought to offer sacrifices to the gods which I or any one not a priest ought not to offer, again I understand and agree with you. But if you tell me that there is in some citizen a hidden charm by which his words become better than my words, and his house better than my house, I do not follow you, and should be pleased if you will explain yourself."

And even if a head of society were a natural idea, it certainly would not follow that the head of the civil government should be that head. Society as such has no more to do with civil polity than with ecclesiastical. The organization of men and women for the purpose of amusement is not necessarily identical with their organization for political purposes, any more than with their organization for religious purposes; it has of itself no more to do with the State than it has with the Church. The faculties which fit a man to be a great ruler are not those of society; some great rulers have been unintelligible like Cromwell, or brusque like Napoleon, or coarse and barbarous like Sir Robert Walpole. The light nothings of the drawing-room and the grave things of office are as different from one another as two human occupations can be. There is no naturalness in uniting the two; the end of it always is, that you put a man at the head of society who very likely is remarkable for social defects, and is not eminent for social merits.

The best possible commentary on these remarks is the "History of English Royalty." It has not been sufficiently remarked that a change has taken place in the structure of our society exactly analogous to the change in our polity. A Republic has insinuated itself beneath the folds of a Monarchy. Charles II. was really the head of society; Whitehall, in his time, was the centre of the best talk, the best fashion, and the most curious love affairs of the age. He did not contribute good morality to society, but he set an example of infinite agreeableness. He concentrated around him all the light part of the high world of London, and London concentrated around it all the light part of the high world of England. The Court was the focus where everything fascinating gathered, and where everything exciting centered. Whitehall was an unequaled club, with female society of a very clever, sharp sort superadded. All this, as we know, is now altered. Buckingham Palace is as unlike a club as any place is likely to be. The Court is a separate part, which stands aloof from the rest of the London world, and which has but slender relations with the more amusing part of it. The first two Georges were men ignorant of English, and wholly unfit to guide and lead English society. They both preferred one or two German ladies of bad character to all else in London. George III. had no social vices, but he had no social pleasures. He was a family man, and a man of business, and sincerely preferred a leg of mutton and turnips after a good day's work, to the best fashion and the most exciting talk. In consequence society in London, though still in form under the domination of a Court, assumed in fact its natural and oligarchical structure. It, too, has become an "upper ten thousand;" it is no more monarchical in fact than the society of New York. Great ladies give the tone to it with little reference to the particular Court world. The peculiarly masculine world of the clubs and their neighborhood has no more to do in daily life with Buckingham Palace than with the Tuileries. Formal ceremonies of presentation and attendance are retained. The names of levee and drawing-room

still sustain the memory of the time when the king's bedchamber and the queen's "withdrawing room" were the centres of London life, but they no longer make a part of social enjoyment: they are a sort of ritual in which now-a-days almost every decent person can if he likes take part. Even Court balls, where pleasure is at least supposed to be possible, are lost in a London July. Careful observers have long perceived this, but it was made palpable to every one by the death of the Prince Consort. Since then the Court has been always in a state of suspended animation, and for a time it was quite annihilated. But everything went on as usual. A few people who had no daughters and little money made it an excuse to give fewer parties, and if very poor, stayed in the country, but upon the whole the difference was not perceptible. The queen bee was taken away, but the hive went on.

Refined and original observers have of late objected to English royalty that it is not splendid enough. They have compared it with the French Court, which is better in show, which comes to the surface everywhere so that you cannot help seeing it, which is infinitely and beyond question the most splendid thing in France. They have said, "that in old times the English Court took too much of the nation's money, and spent it ill; but now, when it could be trusted to spend well, it does not take enough of the nation's money. There are arguments for not having a Court, and there are arguments for having a splendid Court; but there are no arguments for having a mean Court. It is better to spend a million in dazzling when you wish to dazzle, than three-quarters of a million in trying to dazzle and yet not dazzling." There may be something in this theory; it may be that the Court of England is not quite as gorgeous as we might wish to see it. But no comparison must ever be made between it and the French Court. The Emperor represents a different idea from the Queen. He is not the head of the State; he is the State. The theory of his government is that every one in France is equal, and that the Emperor embodies the principle of equality. The greater

you make him, the less, and therefore the more equal, you make all others. He is magnified that others may be dwarfed. The very contrary is the principle of English royalty. As in politics it would lose its principal use if it came forward into the public arena, so in society if it advertised itself it would be pernicious. We have voluntary show enough already in London; we do not wish to have it encouraged and intensified, but quieted and mitigated. Our Court is but the head of an unequal, competing, aristocratic society; its splendor would not keep others down, but incite others to come on. It is of use so long as it keeps others out of the first place, and is guarded and retired in that place. But it would do evil if it added a new example to our many examples of showy wealth — if it gave the sanction of its dignity to the race of expenditure.

Fourthly. We have come to regard the Crown as the head of our MORALITY. The virtues of Queen Victoria and the virtues of George III. have sunk deep into the popular heart. We have come to believe that it is natural to have a virtuous sovereign, and that the domestic virtues are as likely to be found on thrones as they are eminent when there. But a little experience and less thought show that royalty cannot take credit for domestic excellence. Neither George I., nor George II., nor William IV. were patterns of family merit; George IV. was a model of family demerit. The plain fact is, that to the disposition of all others most likely to go wrong, to an excitable disposition, the place of a constitutional king has greater temptations than almost any other, and fewer suitable occupations than almost any other. All the world and all the glory of it, whatever is most attractive, whatever is most seductive, has always been offered to the Prince of Wales of the day, and always will be. It is not rational to expect the best virtue where temptation is applied in the most trying form at the frailest time of human life. The occupations of a constitutional monarch are grave, formal, important, but never exciting; they have nothing to stir eager blood, awaken high imag-

ination, work off wild thoughts. On men like George III., with a predominant taste for business occupations, the routine duties of constitutional royalty have doubtless a calm and chastening effect. The insanity with which he struggled, and in many cases struggled very successfully, during many years, would probably have burst out much oftener but for the sedative effect of sedulous employment. But how few princes have ever felt the anomalous impulse for real work; how uncommon is that impulse anywhere; how little are the circumstances of princes calculated to foster it; how little can it be relied on as an ordinary breakwater to their habitual temptations! Grave and careful men may have domestic virtues on a constitutional throne, but even these fail sometimes, and to imagine that men of more eager temperaments will commonly produce them, is to expect grapes from thorns and figs from thistles.

Lastly. Constitutional royalty has the function which I insisted on at length in my last essay, and which, though it is by far the greatest, I need not now enlarge upon again. It acts as a DISGUISE. It enables our real rulers to change without heedless people knowing it. The masses of Englishmen are not fit for an elective government; if they knew how near they were to it, they would be surprised, and almost tremble.

Of a like nature is the value of constitutional royalty in times of transition. The greatest of all helps to the substitution of a cabinet government for a preceding absolute monarchy, is the accession of a king favorable to such a government, and pledged to it. Cabinet government, when new, is weak in time of trouble. The Prime Minister — the chief on whom everything depends, who must take responsibility if any one is to take it, who must use force if any one is to use it — is not fixed in power. He holds his place, by the essence of the government, with some uncertainty. Among a people well accustomed to such a government such a functionary may be bold; he may rely, if not on the Parliament, on the nation which understands and values him. But when

that government has only recently been introduced, it is difficult for such a minister to be as bold as he ought to be. His power rests too much on human reason, and too little on human instinct. The traditional strength of the hereditary monarch is at these times of incalculable use. It would have been impossible for England to get through the first years after 1688 but for the singular ability of William III. It would have been impossible for Italy to have attained and kept her freedom without the help of Victor Emmanuel; neither the work of Cavour nor the work of Garibaldi were more necessary than his. But the failure of Louis Philippe to use his reserve power as constitutional monarch is the most instructive proof how great that reserve power is. In February, 1848, Guizot was weak because his tenure of office was insecure. Louis Philippe should have made that tenure certain. Parliamentary reform might afterward have been conceded to instructed opinion, but nothing ought to have been conceded to the mob. The Parisian populace ought to have been put down, as Guizot wished. If Louis Philippe had been a fit king to introduce free government, he would have strengthened his ministers when they were the instruments of order, even if he afterward discarded them when order was safe, and policy could be discussed. But he was one of the cautious men who are "noted" to fail in old age: though of the largest experience, and of great ability, he failed and lost his crown for want of petty and momentary energy, which at such a crisis a plain man would have at once put forth.

Such are the principal modes in which the institution of royalty by its august aspect influences mankind, and in the English state of civilization they are invaluable. Of the actual business of the sovereign — the real work the Queen does — I shall speak in my next paper.

III.

THE MONARCHY — (*Continued*).

The House of Commons has inquired into most things, but has never had a committee on "the Queen." There is no authentic blue-book to say what she does. Such an investigation cannot take place; but if it could, it would probably save her much vexatious routine, and many toilsome and unnecessary hours.

The popular theory of the English Constitution involves two errors as to the sovereign. First, in its oldest form at least, it considers him as an "Estate of the Realm," a separate co-ordinate authority with the House of Lords and the House of Commons. This and much else the sovereign once was, but this he is no longer. That authority could only be exercised by a monarch with a legislative veto. He should be able to reject bills, if not as the House of Commons rejects them, at least as the House of Peers rejects them. But the Queen has no such veto. She must sign her own death-warrant if the two Houses unanimously send it up to her. It is a fiction of the past to ascribe to her legislative power. She has long ceased to have any. Secondly, the ancient theory holds that the Queen is the executive. The American Constitution was made upon a most careful argument, and most of that argument assumes the king to be the administrator of the English Constitution, and an unhereditary substitute for him — *viz.*, a president — to be peremptorily necessary. Living across the Atlantic, and misled by accepted doctrines, the acute framers of the Federal Constitution, even after the keenest attention, did not perceive the Prime Minister to be the principal executive of the British Constitution, and the sovereign a cog in the mechanism. There is, indeed, much excuse

for the American legislators in the history of that time. They took their idea of our Constitution from the time when they encountered it. But in the so-called government of Lord North, George III. was the government. Lord North was not only his appointee, but his agent. The minister carried on a war which he disapproved and hated, because it was a war which his sovereign approved and liked. Inevitably, therefore, the American Convention believed the King, from whom they had suffered, to be the real executive, and not the minister, from whom they had not suffered.

If we leave literary theory, and look to our actual old law, it is wonderful how much the sovereign can do. A few years ago the Queen very wisely attempted to make life Peers, and the House of Lords very unwisely, and contrary to its own best interests, refused to admit her claim. They said her power had decayed into non-existence: she once had it, they allowed, but it had ceased by long disuse. If any one will run over the pages of Comyn's "Digest," or any other such book, title "Prerogative," he will find the Queen has a hundred such powers which waver between reality and desuetude, and which would cause a protracted and very interesting legal argument if she tried to exercise them. Some good lawyer ought to write a careful book to say which of these powers are really usable, and which are obsolete. There is no authentic explicit information as to what the Queen can do, any more than of what she does.

In the bare superficial theory of free institutions this is undoubtedly a defect. Every power in a popular government ought to be known. The whole notion of such a government is that the political people — the governing people — rules as it thinks fit. All the acts of every administration are to be canvassed by it; it is to watch if such acts seem good, and in some manner or other to interpose if they seem not good. But it cannot judge if it is to be kept in ignorance; it cannot interpose if it does not know. A secret prerogative is an anomaly — perhaps the greatest of anomalies. That secrecy is, however, essen-

tial to the utility of English royalty as it now is. Above all things our royalty is to be reverenced, and if you begin to poke about it you cannot reverence it. When there is a select committee on the Queen, the charm of royalty will be gone. Its mystery is its life. We must not let in daylight upon magic. We must not bring the Queen into the combat of politics, or she will cease to be reverenced by all combatants; she will become one combatant among many. The existence of this secret power is, according to abstract theory, a defect in our constitutional polity, but it is a defect incident to a civilization such as ours, where august and therefore unknown powers are needed, as well as known and serviceable powers.

If we attempt to estimate the working of this inner power by the evidence of those, whether dead or living, who have been brought in contact with it, we shall find a singular difference. Both the courtiers of George III. and the courtiers of Queen Victoria are agreed as to the magnitude of the royal influence. It is with both an accepted secret doctrine that the Crown does more than it seems. But there is a wide discrepancy in opinion as to the quality of that action. Mr. Fox did not scruple to describe the hidden influence of George III. as the undetected agency of "an infernal spirit." The action of the Crown at that period was the dread and terror of Liberal politicians. But now the best Liberal politicians say, "We shall never know, but when history is written our children may know, what we owe to the Queen and Prince Albert." The mystery of the Constitution, which used to be hated by our calmest, most thoughtful, and instructed statesmen, is now loved and reverenced by them.

Before we try to account for this change, there is one part of the duties of the Queen which should be struck out of the discussion. I mean the formal part. The Queen has to assent to and sign countless formal documents, which contain no matter of policy, of which the purport is insignificant, which any clerk could sign as well. One great class of documents George III. used to

read before he signed them, till Lord Thurlow told him, "It was nonsense his looking at them, for he could not understand them." But the worst case is that of commissions in the army. Till an act passed only three years since, the Queen used to sign ALL military commissions, and she still signs all fresh commissions. The inevitable and natural consequence is that such commissions were, and to some extent still are, in arrears by thousands. Men have often been known to receive their commissions for the first time years after they have left the service. If the Queen had been an ordinary officer she would long since have complained, and long since have been relieved of this slavish labor. A cynical statesman is said to have defended it on the ground "that you MAY have a fool for a sovereign, and then it would be desirable he should have plenty of occupation in which he can do no harm." But it is in truth childish to heap formal duties of business upon a person who has of necessity so many formal duties of society. It is a remnant of the old days when George III. would know everything, however trivial, and assent to everything, however insignificant. These labors of routine may be dismissed from the discussion. It is not by them that the sovereign acquires his authority either for evil or for good.

The best mode of testing what we owe to the Queen is to make a vigorous effort of the imagination, and see how we should get on without her. Let us strip Cabinet government of all its accessories, let us reduce it to its two necessary constituents — a representative assembly (a House of Commons) and a cabinet appointed by that assembly — and examine how we should manage with them only. We are so little accustomed to analyze the Constitution; we are so used to ascribe the whole effect of the Constitution to the whole Constitution, that a great many people will imagine it to be impossible that a nation should thrive or even live with only these two simple elements. But it is upon that possibility that the general imitability of the English

Government depends. A monarch that can be truly reverenced, a House of Peers that can be really respected, are historical accidents nearly peculiar to this one island, and entirely peculiar to Europe. A new country, if it is to be capable of a Cabinet government, if it is not to degrade itself to Presidential government, must create that cabinet out of its native resources — must not rely on these old world *débris*.

Many modes might be suggested by which a Parliament might do in appearance what our Parliament does in reality, *viz.*, appoint a Premier. But I prefer to select the simplest of all modes. We shall then see the bare skeleton of this polity, perceive in what it differs from the royal form, and be quite free from the imputation of having selected an unduly charming and attractive substitute.

Let us suppose the House of Commons — existing alone and by itself — to appoint the Premier quite simply, just as the shareholders of a railway choose a director. At each vacancy, whether caused by death or resignation, let any member or members have the right of nominating a successor; after a proper interval, such as the time now commonly occupied by a ministerial crisis, ten days or a fortnight, let the members present vote for the candidate they prefer; then let the Speaker count the votes, and the candidate with the greatest number be Premier. This mode of election would throw the whole choice into the hands of party organization, just as our present mode does, except in so far as the Crown interferes with it; no outsider would ever be appointed, because the immense number of votes which every great party brings into the field would far outnumber every casual and petty minority. The Premier should not be appointed for a fixed time, but during good behavior or the pleasure of Parliament. *Mutatis mutandis*, subject to the differences now to be investigated, what goes on now would go on then. The Premier then, as now, must resign upon a vote of want of confidence, but the volition of Parliament would then be the overt and single force

in the selection of a successor, whereas it is now the predominant though latent force.

It will help the discussion very much if we divide it into three parts. The whole course of a representative government has three stages — first, when a ministry is appointed; next, during its continuance; last, when it ends. Let us consider what is the exact use of the Queen at each of these stages, and how our present form of government differs in each, whether for good or for evil, from that simpler form of cabinet government which might exist without her.

At the beginning of an administration there would not be much difference between the royal and unroyal species of cabinet governments when there were only two great parties in the State, and when the greater of those parties was thoroughly agreed within itself who should be its Parliamentary leader, and who therefore should be its premier. The sovereign must now accept that recognized leader; and if the choice were directly made by the House of Commons, the House must also choose him; its supreme section, acting compactly and harmoniously, would sway its decisions without substantial resistance, and perhaps without even apparent competition. A predominant party, rent by no intestine demarcation, would be despotic. In such a case cabinet government would go on without friction whether there was a Queen or whether there was no Queen. The best sovereign could then achieve no good, and the worst effect no harm.

But the difficulties are far greater when the predominant party is not agreed who should be its leader. In the royal form of cabinet government the sovereign then has sometimes a substantial selection; in the unroyal, who would choose? There must be a meeting at "Willis's Rooms"; there must be that sort of interior despotism of the majority over the minority within the party, by which Lord John Russell in 1859 was made to resign his pretensions to the supreme government, and to be content to serve as a subordinate to Lord Palmerston. The tacit compression which a party anxious for

office would exercise over leaders who divided its strength, would be used and must be used. Whether such a party would always choose precisely the best man may well be doubted. In a party once divided it is very difficult to secure unanimity in favor of the very person whom a disinterested bystander would recommend. All manner of jealousies and enmities are immediately awakened, and it is always difficult, often impossible, to get them to sleep again. But though such a party might not select the very best leader, they have the strongest motives to select a very good leader. The maintenance of their rule depends on it. Under a presidential constitution the preliminary caucuses which choose the president need not care as to the ultimate fitness of the man they choose. They are solely concerned with his attractiveness as a candidate; they need not regard his efficiency as a ruler. If they elect a man of weak judgment, he will reign his stated term; even though he show the best judgment, at the end of that term there will be by constitutional destiny another election. But under a ministerial government there is no such fixed destiny. The government is a removable government; its tenure depends upon its conduct. If a party in power were so foolish as to choose a weak man for its head, it would cease to be in power. Its judgment is its life. Suppose in 1859 that the Whig party had determined to set aside both Earl Russell and Lord Palmerston, and to choose for its head an incapable nonentity, the Whig party would probably have been exiled from office at the Schleswig-Holstein difficulty. The nation would have deserted them, and Parliament would have deserted them, too; neither would have endured to see a secret negotiation, on which depended the portentous alternative of war or peace, in the hands of a person who was thought to be weak — who had been promoted because of his mediocrity — whom his own friends did not respect. A ministerial government, too, is carried on in the face of day. Its life is in debate. A president may be a weak man; yet if he keep good ministers to the end of

his administration, he may not be found out — it may still be a dubious controversy whether he is wise or foolish. But a prime minister must show what he is. He must meet the House of Commons in debate; he must be able to guide that assembly in the management of its business, to gain its ear in every emergency, to rule it in its hours of excitement. He is conspicuously submitted to a searching test, and if he fails he must resign.

Nor would any party like to trust to a weak man the great power which a cabinet government commits to its premier. The premier, though elected by Parliament, can dissolve Parliament. Members would be naturally anxious that the power which might destroy their coveted dignity should be lodged in fit hands. They dare not place in unfit hands a power which, besides hurting the nation, might altogether ruin them. We may be sure, therefore, that whenever the predominant party is divided, the UN-royal form of cabinet government would secure for us a fair and able parliamentary leader — that it would give us a good premier, if not the very best. Can it be said that the royal form does more?

In one case I think it may. If the constitutional monarch be a man of singular discernment, of unprejudiced disposition, and great political knowledge, he may pick out from the ranks of the divided party its very best leader, even at a time when the party, if left to itself, would not nominate him. If the sovereign be able to play the part of that thoroughly intelligent but perfectly disinterested spectator who is so prominent in the works of certain moralists, he may be able to choose better for his subjects than they would choose for themselves. But if the monarch be not so exempt from prejudice, and have not this nearly miraculous discernment, it is not likely that he will be able to make a wiser choice than the choice of the party itself. He certainly is not under the same motive to choose wisely. His place is fixed whatever happens, but the failure of an appointing party depends on the capacity of their appointee.

There is great danger, too, that the judgment of the sovereign may be prejudiced. For more than forty years the personal antipathies of George III. materially impaired successive administrations. Almost at the beginning of his career he discarded Lord Chatham: almost at the end he would not permit Mr. Pitt to coalesce with Mr. Fox. He always preferred mediocrity; he generally disliked high ability; he always disliked great ideas. If constitutional monarchs be ordinary men of restricted experience and common capacity (and we have no right to suppose that BY MIRACLE they will be more), the judgment of the sovereign will often be worse than the judgment of the party, and he will be very subject to the chronic danger of preferring a respectful commonplace man, such as Addington, to an independent first-rate man, such as Pitt.

We shall arrive at the same sort of mixed conclusion if we examine the choice of a Premier under both systems in the critical case of cabinet government — the case of three parties. This is the case in which that species of government is most sure to exhibit its defects, and least likely to exhibit its merits. The defining characteristic of that government is the choice of the executive ruler by the legislative assembly; but when there are three parties a satisfactory choice is impossible. A really good selection is a selection by a large majority which trusts those it chooses, but when there are three parties there is no such trust. The numerically weakest has the casting vote — it can determine which candidate shall be chosen. But it does so under a penalty. It forfeits the right of voting for its own candidate. It settles which of other people's favorites shall be chosen, on condition of abandoning its own favorite. A choice based on such self-denial can never be a firm choice — it is a choice at any moment liable to be revoked. The events of 1858, though not a perfect illustration of what I mean, are a sufficient illustration. The Radical party, acting apart from the moderate Liberal party, kept Lord Derby in power. The ultra-movement party thought it expedient

to combine with the non-movement party. As one of them coarsely but clearly put it, "We get more of our way under these men than under the other men"; he meant that, in his judgment, the Tories would be more obedient to the Radicals than the Whigs. But it is obvious that a union of opposites so marked could not be durable. The Radicals bought it by choosing the men whose principles were most adverse to them; the Conservatives bought it by agreeing to measures whose scope was most adverse to them. After a short interval the Radicals returned to their natural alliance and their natural discontent with the moderate Whigs. They used their determining vote first for a government of one opinion and then for a government of the contrary opinion.

I am not blaming this policy. I am using it merely as an illustration. I say that if we imagine this sort of action greatly exaggerated and greatly prolonged, parliamentary government becomes impossible. If there are three parties, no two of which will steadily combine for mutual action, but of which the weakest gives a rapidly oscillating preference to the two others, the primary condition of cabinet polity is not satisfied. We have not a Parliament fit to choose; we cannot rely on the selection of a sufficiently permanent executive, because there is no fixity in the thoughts and feelings of the choosers.

Under every species of cabinet government, whether the royal or the unroyal, this defect can be cured in one way only. The moderate people of every party must combine to support the government which, on the whole, suits every party best. This is the mode in which Lord Palmerston's administration has been lately maintained; a ministry in many ways defective, but more beneficially vigorous abroad, and more beneficially active at home, than the vast majority of English ministries. The moderate Conservatives and the moderate Radicals have maintained a steady government by a sufficiently coherent union with the moderate Whigs. Whether there is a

king or no king, this preservative self-denial is the main force on which we must rely for the satisfactory continuance of a parliamentary government at this its period of greatest trial. Will that moderation be aided or impaired by the addition of a sovereign? Will it be more effectual under the royal sort of ministerial government, or will it be less effectual?

If the sovereign has a genius for discernment, the aid which he can give at such a crisis will be great. He will select for his minister, and if possible maintain as his minister, the statesman upon whom the moderate party will ultimately fix their choice, but for whom at the outset it is blindly searching; being a man of sense, experience, and tact, he will discern which is the combination of equilibrium, which is the section with whom the milder members of the other sections will at last ally themselves. Amid the shifting transitions of confused parties, it is probable that he will have many opportunities of exercising a selection. It will rest with him to call either upon A B to form an administration or upon X Y, and either may have a chance of trial. A disturbed state of parties is inconsistent with fixity, but it abounds in a momentary tolerance. Wanting something, but not knowing with precision what, parties will accept for a brief period anything, to see whether it may be that unknown something — to see what it will do. During the long succession of weak governments which begins with the resignation of the Duke of Newcastle in 1762 and ends with the accession of Mr. Pitt in 1784, the vigorous will of George III. was an agency of the first magnitude. If at a period of complex and protracted division of parties, such as are sure to occur often and last long in every enduring parliamentary government, the extrinsic force of royal selection were always exercised discreetly, it would be a political benefit of incalculable value.

But will it be so exercised? A constitutional sovereign must in the common course of government be a man of but common ability. I am afraid, looking to the early acquired feebleness of hereditary dynasties, that we must

expect him to be a man of inferior ability. Theory and experience both teach that the education of a prince can be but a poor education, and that a royal family will generally have less ability than other families. What right have we then to expect the perpetual entail on any family of an exquisite discretion, which if it be not a sort of genius, is at least as rare as genius?

Probably in most cases the greatest wisdom of a constitutional king would show itself in well-considered inaction. In the confused interval between 1857 and 1859 the Queen and Prince Albert were far too wise to obtrude any selection of their own. If they had chosen, perhaps they would not have chosen Lord Palmerston. But they saw, or may be believed to have seen, that the world was settling down without them, and that by interposing an extrinsic agency, they would but delay the beneficial crystallization of intrinsic forces. There is, indeed, a permanent reason which would make the wisest king, and the king who feels most sure of his wisdom, very slow to use that wisdom. The responsibility of Parliament should be felt by Parliament. So long as Parliament thinks it is the sovereign's business to find a government it will be sure not to find a government itself. The royal form of ministerial government is the worst of all forms if it erect the subsidiary apparatus into the principal force, if it induce the Assembly which ought to perform paramount duties to expect some one else to perform them.

It should be observed, too, in fairness to the unroyal species of cabinet government, that it is exempt from one of the greatest and most characteristic defects of the royal species. Where there is no court there can be no evil influence from a court. What these influences are every one knows; though no one, hardly the best and closest observer, can say with confidence and precision how great their effect is. Sir Robert Walpole, in language too coarse for our modern manners, declared after the death of Queen Caroline, that he would pay no attention to the king's daughters ("those girls," as he called

them), but would rely exclusively on Madame de Walmoden, the king's mistress. "The king," says a writer in George IV.'s time, "is in our favor, and what is more to the purpose, the Marchioness of Conyngham is so too." Everybody knows to what sort of influences several Italian changes of government since the unity of Italy have been attributed. These sinister agencies are likely to be most effective just when everything else is troubled, and when, therefore, they are particularly dangerous. The wildest and wickedest king's mistress would not plot against an invulnerable administration. But very many will intrigue when Parliament is perplexed, when parties are divided, when alternatives are many, when many evil things are possible, when cabinet government must be difficult.

It is very important to see that a good administration can be started without a sovereign, because some colonial statesmen have doubted it. "I can conceive," it has been said, "that a ministry would go on well enough without a governor when it was launched, but I do not see how to launch it." It has even been suggested that a colony which broke away from England, and had to form its own government, might not unwisely choose a governor for life, and solely trusted with selecting ministers, something like the Abbé Sièyes's grand elector. But the introduction of such an officer into such a colony would in fact be the voluntary erection of an artificial encumbrance to it. He would inevitably be a party man. The most dignified post in the State must be an object of contest to the great sections into which every active political community is divided. These parties mix in everything and meddle in everything; and they neither would nor could permit the most honored and conspicuous of all stations to be filled, except at their pleasure. They know, too, that the grand elector, the great chooser of ministries, might be, at a sharp crisis, either a good friend or a bad enemy. The strongest party would select some one who would be on their side when he had to take a side, who would incline to them when he did incline, who

should be a constant auxiliary to them and a constant impediment to their adversaries. It is absurd to choose by contested party election an impartial chooser of ministers.

But it is during the continuance of a ministry, rather than at its creation, that the functions of the sovereign will mainly interest most persons, and that most people will think them to be of the gravest importance. I own I am myself of that opinion. I think it may be shown that the post of sovereign over an intelligent and political people under a constitutional monarchy is the post which a wise man would choose above any other — where he would find the intellectual impulses best stimulated and the worst intellectual impulses best controlled.

On the duties of the Queen during an administration we have an invaluable fragment from her own hand. In 1851 Louis Napoleon had his *coup d'état;* in 1852 Lord John Russell had his — he expelled Lord Palmerston. By a most instructive breach of etiquette he read in the House a royal memorandum on the duties of his rival. It is as follows: "The Queen requires, first, that Lord Palmerston will distinctly state what he proposes in a given case, in order that the Queen may know as distinctly to what she is giving her royal sanction. Secondly, having once given her sanction to such a measure that it be not arbitrarily altered or modified by the minister. Such an act she must consider as failing in sincerity toward the Crown, and justly to be visited by the exercise of her constitutional right of dismissing that minister. She expects to be kept informed of what passes between him and foreign ministers before important decisions are taken based upon that intercourse; to receive the foreign dispatches in good time; and to have the drafts for her approval sent to her in sufficient time to make herself acquainted with their contents before they must be sent off."

In addition to the control over particular ministers, and especially over the foreign minister, the Queen has a certain control over the cabinet. The first minister, it

is understood, transmits to her authentic information of all the most important decisions, together with what the newspapers would do equally well, the more important votes in Parliament. He is bound to take care that she knows everything which there is to know as to the passing politics of the nation. She has by rigid usage a right to complain if she does not know of every great act of her ministry, not only before it is done, but while there is yet time to consider it — while it is still possible that it may not be done.

To state the matter shortly, the sovereign has, under a constitutional monarchy such as ours, three rights — the right to be consulted, the right to encourage, the right to warn. And a king of great sense and sagacity would want no others. He would find that his having no others would enable him to use these with singular effect. He would say to his minister: "The responsibility of these measures is upon you. Whatever you think best must be done. Whatever you think best shall have my full and effectual support. BUT you will observe that for this reason and that reason what you propose to do is bad; for this reason and that reason what you do not propose is better. I do not oppose, it is my duty not to oppose; but observe that I WARN." Supposing the king to be right, and to have what kings often have, the gift of effectual expression, he could not help moving his minister. He might not always turn his course, but he would always trouble his mind.

In the course of a long reign a sagacious king would acquire an experience with which few ministers could contend. The king could say: "Have you referred to the transactions which happened during such and such an administration, I think about fourteen years ago? They afford an instructive example of the bad results which are sure to attend the policy which you propose. You did not at that time take so prominent a part in public life as you now do, and it is possible you do not fully remember all the events. I should recommend you to recur to them, and to discuss them with your older

colleagues who took part in them. It is unwise to recommence a policy which so lately worked so ill." The king would indeed have the advantage which a permanent under-secretary has over his superior the parliamentary secretary — that of having shared in the proceedings of the previous parliamentary secretaries. These proceedings were part of his own life; occupied the best of his thoughts, gave him perhaps anxiety, perhaps pleasure, were commenced in spite of his dissuasion, or were sanctioned by his approval. The parliamentary secretary vaguely remembers that something was done in the time of some of his predecessors, when he very likely did not know the least or care the least about that sort of public business. He has to begin by learning painfully and imperfectly what the permanent secretary knows by clear and instant memory. No doubt a parliamentary secretary always can, and sometimes does, silence his subordinate by the tacit might of his superior dignity. He says: "I do not think there is much in all that. Many errors were committed at the time you refer to which we need not now discuss." A pompous man easily sweeps away the suggestions of those beneath him. But though a minister may so deal with his subordinate, he cannot so deal with his king. The social force of admitted superiority by which he overturned his under-secretary is now not with him but against him. He has no longer to regard the deferential hints of an acknowledged inferior, but to answer the arguments of a superior to whom he has himself to be respectful. George III. in fact knew the forms of public business as well or better than any statesman of his time. If, in addition to his capacity as a man of business and to his industry, he had possessed the higher faculties of a discerning statesman, his influence would have been despotic. The old Constitution of England undoubtedly gave a sort of power to the Crown which our present Constitution does not give. While a majority in Parliament was principally purchased by royal patronage, the king was a party to the bargain either with his minister or without his minister. But

even under our present Constitution a monarch like George III., with high abilities, would possess the greatest influence. It is known to all Europe that in Belgium King Leopold has exercised immense power by the use of such means as I have described.

It is known, too, to every one conversant with the real course of the recent history of England, that Prince Albert really did gain great power in precisely the same way. He had the rare gifts of a constitutional monarch. If his life had been prolonged twenty years, his name would have been known to Europe as that of King Leopold is known. While he lived he was at a disadvantage. The statesmen who had most power in England were men of far greater experience than himself. He might, and no doubt did, exercise a great, if not a commanding influence over Lord Malmesbury, but he could not rule Lord Palmerston. The old statesman who governed England, at an age when most men are unfit to govern their own families, remembered a whole generation of statesmen who were dead before Prince Albert was born. The two were of different ages and different natures. The elaborateness of the German prince — an elaborateness which has been justly and happily compared with that of Goethe — was wholly alien to the half-Irish, half-English, statesman. The somewhat boisterous courage in minor dangers, and the obtrusive use of an always effectual, but not always refined, common-place, which are Lord Palmerston's defects, doubtless grated on Prince Albert, who had a scholar's caution and a scholar's courage. The facts will be known to our children's children, though not to us. Prince Albert did much, but he died ere he could have made his influence felt on a generation of statesmen less experienced than he was, and anxious to learn from him.

It would be childish to suppose that a conference between a minister and his sovereign can ever be a conference of pure argument. "The divinity which doth hedge a king" may have less sanctity than it had, but it still has much sanctity. No one, or scarcely any one,

can argue with a cabinet minister in his own room as well as he would argue with another man in another room. He cannot make his own points as well: he cannot unmake as well the points presented to him. A monarch's room is worse. The best instance is Lord Chatham, the most dictatorial and imperious of English statesmen, and almost the first English statesman who was borne into power against the wishes of the king and against the wishes of the nobility — the first popular minister. We might have expected a proud tribune of the people to be dictatorial to his sovereign — to be to the king what he was to all others. On the contrary, he was the slave of his own imagination; there was a kind of mystic enchantment in vicinity to the monarch which divested him of his ordinary nature. "The last peep into the king's closet," said Mr. Burke, "intoxicates him, and will to the end of his life." A wit said that, even at the levee, he bowed so slow that you could see the tip of his hooked nose between his legs. He was in the habit of kneeling at the bedside of George III. while transacting business. Now no man can ARGUE on his knees. The same superstitious feeling which keeps him in that physical attitude will keep him in a corresponding mental attitude. He will not refute the bad arguments of the king as he will refute another man's bad arguments. He will not state his own best arguments effectively and incisively when he knows that the king would not like to hear them. In a nearly balanced argument the king must always have the better, and in polities many most important arguments are nearly balanced. Whenever there was much to be said for the king's opinion it would have its full weight; whatever was said for the minister's opinions would only have a lessened and enfeebled weight.

The king, too, possesses a power, according to theory, for extreme use on a critical occasion, but which he can in law use on any occasion. He can dissolve; he can say to his minister in fact, if not in words, "This Parliament sent you here, but I will see if I cannot get another Parliament to send some one else here." George III. well

understood that it was best to take his stand at times and on points when it was perhaps likely, or at any rate not unlikely, the nation would support him. He always made a minister that he did not like tremble at the shadow of a possible successor. He had a cunning in such matters like the cunning of insanity. He had conflicts with the ablest men of his time, and he was hardly ever baffled. He understood how to help a feeble argument by a tacit threat, and how best to address it to an habitual deference.

Perhaps such powers as these are what a wise man would most seek to exercise and least fear to possess. To wish to be a despot, "to hunger after tyranny," as the Greek phrase had it, marks in our day an uncultivated mind. A person who so wishes cannot have weighed what Butler calls the "doubtfulness things are involved in." To be sure you are right to impose your will, or to wish to impose it, with violence upon others; to see your own ideas vividly and fixedly, and to be tormented till you can apply them in life and practice, not to like to hear the opinions of others, to be unable to sit down and weigh the truth they have, are but crude states of intellect in our present civilization. We know, at least, that facts are many; that progress is complicated; that burning ideas (such as young men have) are mostly false and always incomplete. The notion of a far-seeing and despotic statesman, who can lay down plans for ages yet unborn, is a fancy generated by the pride of the human intellect to which facts give no support. The plans of Charlemagne died with him; those of Richelieu were mistaken; those of Napoleon gigantesque and frantic. But a wise and great constitutional monarch attempts no such vanities. His career is not in the air; he labors in the world of sober fact; he deals with schemes which can be effected — schemes which are desirable — schemes which are worth the cost. He says to the ministry his people send to him, to ministry after ministry, "I think so and so; do you see if there is anything in it. I have put down my reasons in a certain memorandum, which

I will give you. Probably it does not exhaust the subject, but it will suggest materials for your consideration." By years of discussion with ministry after ministry, the best plans of the wisest king would certainly be adopted, and the inferior plans, the impracticable plans, rooted out and rejected. He could not be uselessly beyond his time, for he would have been obliged to convince the representatives, the characteristic men of his time. He would have the best means of proving that he was right on all new and strange matters, for he would have won to his side probably, after years of discussion, the chosen agents of the common-place world — men who were where they were, because they had pleased the men of the existing age, who will never be much disposed to new conceptions or profound thoughts. A sagacious and original constitutional monarch might go to his grave in peace if any man could. He would know that his best laws were in harmony with his age; that they suited the people who were to work them, the people who were to be benefited by them. And he would have passed a happy life. He would have passed a life in which he could always get his arguments heard, in which he could always make those who had the responsibility of action think of them before they acted — in which he could know that the schemes which he had set at work in the world were not the casual accidents of an individual idiosyncrasy, which are mostly much wrong, but the likeliest of all things to be right — the ideas of one very intelligent man at last accepted and acted on by the ordinary intelligent many.

But can we expect such a king, or, for that is the material point, can we expect a lineal series of such kings? Every one has heard the reply of the Emperor Alexander to Madame de Stael, who favored him with a declamation in praise of beneficent despotism. "Yes, Madame, but it is only a happy accident." He well knew that the great abilities and the good intentions necessary to make an efficient and good despot never were continuously combined in any line of rulers. He knew that they were

far out of reach of hereditary human nature. Can it be said that the characteristic qualities of a constitutional monarch are more within its reach? I am afraid it cannot. We found just now that the charcteristic use of an hereditary constitutional monarch, at the outset of an administration, greatly surpassed the ordinary competence of hereditary faculties. I fear that an impartial investigation will establish the same conclusion as to his uses during the continuance of an administration.

If we look at history, we shall find that it is only during the period of the present reign that in England the duties of a constitutional sovereign have ever been well performed. The first two Georges were ignorant of English affairs, and wholly unable to guide them, whether well or ill; for many years in their time the Prime Minister had, over and above the labor of managing Parliament, to manage the woman — sometimes the queen, sometimes the mistress — who managed the sovereign; George III. interfered unceasingly, but he did harm unceasingly; George IV. and William IV. gave no steady continuing guidance, and were unfit to give it. On the Continent, in first-class countries, constitutional royalty has never lasted out of one generation. Louis Philippe, Victor Emmanuel, and Leopold are the founders of their dynasties; we must not reckon in constitutional monarchy any more than in despotic monarchy on the permanence in the descendants of the peculiar genius which founded the race. As far as experience goes, there is no reason to expect an hereditary series of useful limited monarchs.

If we look to theory, there is even less reason to expect it. A monarch is useful when he gives an effectual and beneficial guidance to his ministers. But these ministers are sure to be among the ablest men of their time. They will have to conduct the business of Parliament so as to satisfy it; they will have to speak so as to satisfy it. The two together cannot be done save by a man of very great and varied ability. The exercise of the two gifts is sure to teach a man much of the world; and if

it did not, a parliamentary leader has to pass through a magnificent training before he becomes a leader. He has to gain a seat in Parliament; to gain the ear of Parliament; to gain the confidence of Parliament; to gain the confidence of his colleagues. No one can achieve these — no one, still more, can both achieve them and retain them — without a singular ability, nicely trained in the varied detail of life. What chance has an hereditary monarch such as nature forces him to be, such as history shows he is, against men so educated and so born? He can but be an average man to begin with; sometimes he will be clever, but sometimes he will be stupid; in the long run he will be neither clever nor stupid; he will be the simple, common man who plods the plain routine of life from the cradle to the grave. His education will be that of one who has never had to struggle; who has always felt that he nas nothing to gain; who has had the first dignity given him; who has never seen common life as in truth it is. It is idle to expect an ordinary man born in the purple to have greater genius than an extraordinary man born out of the purple; to expect a man whose place has always been fixed to have a better judgment than one who has lived by his judgment; to expect a man whose career will be the same whether he is discreet or whether he is indiscreet, to have the nice discretion of one who has risen by his wisdom, who will fall if he ceases to be wise.

The characteristic advantage of a constitutional king is the permanence of his place. This gives him the opportunity of acquiring a consecutive knowledge of complex transactions, but it gives only an opportunity. The king must use it. There is no royal road to political affairs: their detail is vast, disagreeable, complicated, and miscellaneous. A king, to be the equal of his ministers in discussion, must work as they work; he must be a man of business as they are men of business. Yet a constitutional prince is the man who is most tempted to pleasure, and the least forced to business. A despot must feel that he is the pivot of the State. The stress

of his kingdom is upon him. As he is, so are his affairs. He may be seduced into pleasure; he may neglect all else; but the risk is evident. He will hurt himself; he may cause a revolution. If he becomes unfit to govern, some one else who is fit may conspire against him. But a constitutional king need fear nothing. He may neglect his duties, but he will not be injured. His place will be as fixed, his income as permanent, his opportunities of selfish enjoyment as full as ever. Why should he work? It is true he will lose the quiet and secret influence which in the course of years industry would gain for him; but an eager young man, on whom the world is squandering its luxuries and its temptations, will not be much attracted by the distant prospect of a moderate influence over dull matters. He may form good intentions: he may say, "Next year I WILL read these papers; I will try and ask more questions; I will not let these women talk to me so." But they will talk to him. The most hopeless idleness is that most smoothed with excellent plans. "The Lord Treasurer," says Swift, "promised he will settle it tonight, and so he will say a hundred nights." We may depend upon it the ministry whose power will be lessened by the prince's attention will not be too eager to get him to attend.

So it is if the prince come young to the throne; but the case is worse when he comes to it old or middle-aged. He is then unfit to work. He will then have spent the whole of youth and the first part of manhood in idleness, and it is unnatural to expect him to labor. A pleasure-loving lounger in middle life will not begin to work as George III. worked, or as Prince Albert worked. The only fit material for a constitutional king is a prince who begins early to reign — who in his youth is superior to pleasure — who in his youth is willing to labor — who has by nature a genius for discretion. Such kings are among God's greatest gifts, but they are also among His rarest.

An ordinary idle king on a constitutional throne will leave no mark on his time; he will do little good and as

little harm; the royal form of cabinet government will work in his time pretty much as the unroyal. The addition of a cypher will not matter though it take precedence of the significant figures. But *corruptio optima pessima.* The most evil case of the royal form is far worse than the most evil case of the unroyal. It is easy to imagine, upon a constitutional throne, an active and meddling fool, who always acts when he should not, who never acts when he should, who warns his ministers against their judicious measures, who encourages them in their unjudicious measures. It is easy to imagine that such a king should be the tool of others; that favorites should guide him; that mistresses should corrupt him; that the atmosphere of a bad court should be used to degrade free government.

We have have had an awful instance of the dangers of constitutional royalty. We have had the case of a meddling maniac. During great part of his life George III.'s reason was half upset by every crisis. Throughout his life he had an obstinacy akin to that of insanity. He was an obstinate and an evil influence; he could not be turned from what was inexpedient; by the aid of his station he turned truer but weaker men from what was expedient. He gave an excellent moral example to his contemporaries, but he is an instance of those whose good dies with them, while their evil lives after them. He prolonged the American war, perhaps he caused the American war, so we inherit the vestiges of an American hatred; he forbade Mr. Pitt's wise plans, so we inherit an Irish difficulty. He would not let us do right in time, so now our attempts at right are out of time and fruitless. Constitutional royalty under an active and half-insane king is one of the worst of governments. There is in it a secret power which is always eager, which is generally obstinate, which is often wrong, which rules ministers more than they know themselves, which overpowers them much more than the public believe, which is irresponsible because it is inscrutable, which cannot be prevented because it cannot be seen. The benefits of a

good monarch are almost invaluable, but the evils of a bad monarch are almost irreparable.

We shall find these conclusions confirmed if we examine the powers and duties of an English monarch at the break-up of an administration. But the power of dissolution and the prerogative of creating peers, the cardinal powers of that moment, are too important and involve too many complex matters to be sufficiently treated at the very end of a paper as long as this.

IV.

THE HOUSE OF LORDS.

In my last essay I showed that it was possible for a constitutional monarch to be, when occasion served, of first-rate use both at the outset and during the continuance of an administration; but that in matter of fact it was not likely that he would be useful. The requisite ideas, habits, and faculties far surpass the usual competence of an average man, educated in the common manner of sovereigns. The same arguments are entirely applicable at the close of an administration. But at that conjuncture the two most singular prerogatives of an English king — the power of creating new peers and the power of dissolving the Commons — come into play; and we cannot duly criticise the use or misuse of these powers till we know what the peers are and what the House of Commons is.

The use of the House of Lords — or, rather, of the Lords, in its dignified capacity — is very great. It does not attract so much reverence as the Queen, but it attracts very much. The office of an order of nobility is to impose on the common people — not necessarily to impose on them what is untrue, yet less what is hurtful; but still to impose on their quiescent imaginations what would not otherwise be there. The fancy of the mass of men is incredibly weak; it can see nothing without a visible symbol, and there is much that it can scarcely make out with a symbol. Nobility is the symbol of mind. It has the marks from which the mass of men always used to infer mind, and often still infer it. A common clever man who goes into a country place will get no reverence; but the "old squire" will get reverence. Even after he is insolvent, when every one knows

that his ruin is but a question of time, he will get five times as much respect from the common peasantry as the newly-made rich man who sits beside him. The common peasantry will listen to his nonsense more submissively than to the new man's sense. An old lord will get infinite respect. His very existence is so far useful that it awakens the sensation of obedience to a SORT of mind in the coarse, dull, contracted multitude, who could neither appreciate nor perceive any other.

The order of nobility is of great use, too, not only in what it creates, but in what it prevents. It prevents the rule of wealth — the religion of gold. This is the obvious and natural idol of the Anglo-Saxon. He is always trying to make money; he reckons everything in coin; he bows down before a great heap and sneers as he passes a little heap. He has a "natural instinctive admiration of wealth for its own sake." And within good limits the feeling is quite right. So long as we play the game of industry vigorously and eagerly (and I hope we shall long play it, for we must be very different from what we are if we do anything better), we shall of necessity respect and admire those who play successfully, and a little despise those who play unsuccessfully. Whether this feeling be right or wrong, it is useless to discuss; to a certain degree, it is involuntary: it is not for mortals to settle whether we will have it or not; nature settles for us that, within moderate limits, we must have it. But the admiration of wealth in many countries goes far beyond this; it ceases to regard in any degree the skill of acquisition; it respects wealth in the hands of the inheritor just as much as in the hands of the maker; it is a simple envy and love of a heap of gold as a heap of gold. From this our aristocracy preserves us. There is no country where a "poor devil of a millionaire is so ill off as in England." The experiment is tried every day, and every day it is proved that money alone — money *pur et simple* — will not buy "London Society." Money is kept down, and, so to say, cowed by the predominant authority of a different power.

But it may be said that this is no gain; that worship

for worship, the worship of money is as good as the worship of rank. Even granting that it were so, it is a great gain to society to have two idols; in the competition of idolatries, the true worship gets a chance. But it is not true that the reverence for rank — at least for hereditary rank — is as base as the reverence for money. As the world has gone, manner has been half-hereditary in certain castes, and manner is one of the fine arts. It is the STYLE of society; it is in the daily-spoken intercourse of human beings what the art of literary expression is in their occasional written intercourse. In reverencing wealth we reverence not a man, but an appendix to a man; in reverencing inherited nobility, we reverence the probable possession of a great faculty — the faculty of bringing out what is in one. The unconscious grace of life MAY be in the middle classes: finely-mannered persons are born everywhere; but it OUGHT to be in the aristocracy; and a man must be born with a hitch in his nerves if he has not some of it. It is a physiological possession of the race, though it is sometimes wanting in the individual.

There is a third idolatry from which that of rank preserves us, and perhaps it is the worst of any — that of office. The basest deity is a subordinate EMPLOYÉ, and yet just now in civilized governments it is the commonest. In France and all the best of the Continent it rules like a superstition. It is to no purpose that you prove that the pay of petty officials is smaller than mercantile pay; that their work is more monotonous than mercantile work; that their mind is less useful and their life more tame. They are still thought to be greater and better. They are *decorés;* they have a little red on the left breast of their coat, and no argument will answer that. In England, by the odd course of our society, what a theorist would desire has in fact turned up. The great offices, whether permanent or parliamentary, which require mind now give social prestige, and almost only those. An Under-Secretary of State with £2,000 a year is a much greater man than the

director of a finance company with £5,000, and the country saves the difference. But except in a few offices like the Treasury, which were once filled with aristocratic people, and have an odor of nobility at second-hand, minor place is of no social use. A big grocer despises the exciseman; and what in many countries would be thought impossible, the exciseman envies the grocer. Solid wealth tells where there is no artificial dignity given to petty public functions. A clerk in the public service is "nobody;" and you could not make a common Englishman see why he should be anybody.

But it must be owned that this turning of society into a political expedient has half spoiled it. A great part of the "best" English people keep their mind in a state of decorous dullness. They maintain their dignity; they get obeyed; they are good and charitable to their dependants. But they have no notion of PLAY of mind; no conception that the charm of society depends upon it. They think cleverness an antic, and have a constant though needless horror of being thought to have any of it. So much does this stiff dignity give the tone, that the few Englishmen capable of social brilliancy mostly secrete it. They reserve it for persons whom they can trust, and whom they know to be capable of appreciating its *nuances*. But a good government is well worth a great deal of social dullness. The dignified torpor of English society is inevitable if we give precedence, not to the cleverest classes, but to the oldest classes, and we have seen how useful that is.

The social prestige of the aristocracy is, as every one knows, immensely less than it was a hundred years or even fifty years since. Two great movements — the two greatest of modern society — have been unfavorable to it. The rise of industrial wealth in countless forms has brought in a competitor which has generally more mind, and which would be supreme were it not for awkwardness and intellectual *gêne*. Every day our companies, our railways, our debentures, and our shares, tend more and

more to multiply these SURROUNDINGS of the aristocracy, and in time they will hide it. And while this undergrowth has come up, the aristocracy have come down. They have less means of standing out than they used to have. Their power is in their theatrical exhibition, in their state. But society is every day becoming less stately. As our great satirist has observed, "The last Duke of St. David's used to cover the north road with his carriages; landladies and waiters bowed before him. The present Duke sneaks away from a railway station, smoking a cigar, in a brougham." The aristocracy cannot lead the old life if they would; they are ruled by a stronger power. They suffer from the tendency of all modern society to raise the average, and to lower — comparatively, and perhaps absolutely, to lower — the summit. As the picturesqueness, the featureliness, of society diminishes, aristocracy loses the single instrument of its peculiar power.

If we remember the great reverence which used to be paid to nobility as such, we shall be surprised that the House of Lords, as an assembly, has always been inferior; that it was always just as now, not the first, but the second of our assemblies. I am not of course, now speaking of the Middle Ages; I am not dealing with the embryo or the infant form of our Constitution; I am only speaking of its adult form. Take the times of Sir R. Walpole. He was Prime Minister because he managed the House of Commons; he was turned out because he was beaten on an election petition in that House; he ruled England because he ruled that House. Yet the nobility were then the governing power in England. In many districts the word of some Lord was law. The "wicked Lord Lowther," as he was called, left a name of terror in Westmoreland during the memory of men now living. A great part the borough members and a great part of the county members were their nominees; an obedient, unquestioning deference was paid them. As individuals the peers were the greatest people: as a House the collected Peers were but the second House.

Several causes contributed to create this anomaly, but the main cause was a natural one. The House of Peers has never been a House where the most important Peers were most important. It could not be so. The qualities which fit a man for marked eminence, in a deliberative assembly, are not hereditary, and are not coupled with great estates. In the nation, in the provinces, in his own province, a Duke of Devonshire, or a Duke of Bedford, was a much greater man than Lord Thurlow. They had great estates, many boroughs, innumerable retainers, followings like a court. Lord Thurlow had no boroughs, no retainers; he lived on his salary. Till the House of Lords met, the dukes were not only the greatest, but immeasurably the greatest. But as soon as the House met, Lord Thurlow became the greatest. He could speak, and the others could not speak. He could transact business in half an hour which they could not have transacted in a day, or could not have transacted at all. When some foolish Peer, who disliked his domination, sneered at his birth, he had words to meet the case: he said it was better for anyone to owe his place to his own exertions than to owe it to descent, to being the "accident of an accident." But such a House as this could not be pleasant to great noblemen. They could not like to be second in their own assembly (and yet that was their position from age to age) to a lawyer who was of yesterday, whom everybody could remember without briefs, who had talked for "hire," who had "hungered after six-and-eightpence." Great Peers did not gain glory from the House; on the contrary, they lost glory when they were in the House. They devised two expedients to get out of this difficulty; they invented proxies which enabled them to vote without being present, without being offended by vigor and invective, without being vexed by ridicule, without leaving the rural mansion or the town palace where they were demigods. And what was more effectual still, they used their influence in the House of Commons instead of the House of Lords. In that indirect manner a rural potentate, who half returned two county members, and

wholly returned two borough members,—who perhaps gave seats to members of the Government,—who possibly seated the leader of the Opposition,—became a much greater man than by sitting on his own bench, in his own House, hearing a chancellor talk. The House of Lords was a second-rate force, even when the Peers were a first-rate force, because the greatest Peers, those who had the greatest social importance, did not care for their own House, or like it, but gained great part of their political power by a hidden but potent influence in the competing House.

When we cease to look at the House of Lords under its dignified aspect, and come to regard it under its strictly useful aspect, we find the literary theory of the English Constitution wholly wrong, as usual. This theory says that the House of Lords is a co-ordinate estate of the realm, of equal rank with the House of Commons; that it is the aristocratic branch, just as the Commons is the popular branch; and that by the principle of our Constitution the aristocratic branch has equal authority with the popular branch. So utterly false is this doctrine that it is a remarkable peculiarity, a capital excellence of the British Constitution, that it contains a sort of Upper House, which is not of equal authority to the Lower House, yet still has some authority.

The evil of two co-equal Houses of distinct natures is obvious. Each House can stop all legislation, and yet some legislation may be necessary. At this moment we have the best instance of this which could be conceived. The Upper House of our Victorian Constitution, representing the rich wool-growers, has disagreed with the Lower Assembly, and most business is suspended. But for a most curious stratagem the machine of government would stand still. Most constitutions have committed this blunder. The two most remarkable Republican institutions in the world commit it. In both the American and the Swiss Constitutions the Upper House has as much authority as the second; it could produce the maximum of impediment—the dead-lock, if it liked; if it does not

do so, it is owing not to the goodness of the legal constitution; but to the discreetness of the members of the Chamber. In both these constitutions this dangerous division is defended by a peculiar doctrine with which I have nothing to do now. It is said that there must be in a Federal Government some institution, some authority, some body possessing a veto in which the separate States composing the Confederation are all equal. I confess this doctrine has to me no self-evidence, and it is assumed, but not proved. The State of Delaware is NOT equal in power or influence to the State of New York, and you cannot make it so by giving it an equal veto in an Upper Chamber. The history of such an institution is indeed most natural. A little State will like, and must like, to see some token, some memorial mark of its old independence preserved in the Constitution by which that independence is extinguished. But it is one thing for an institution to be natural, and another for it to be expedient. If indeed it be that a Federal Government compels the erection of an Upper Chamber of conclusive and co-ordinate authority, it is one more in addition to the many other inherent defects of that kind of government. It may be necessary to have the blemish, but it is a blemish just as much.

There ought to be in every constitution an available authority somewhere. The sovereign power must be COME-AT-ABLE. And the English have made it so. The House of Lords, at the passing of the Reform Act of 1832, was as unwilling to concur with the House of Commons as the Upper Chamber at Victoria to concur with the Lower Chamber. But it did concur. The Crown has the authority to create new peers; and the king of the day had promised the ministry of the day to create them. The House of Lords did not like the precedent, and they passed the Bill. The power was not used, but its existence was as useful as its energy. Just as the knowledge that his men CAN strike makes a master yield in order that they may not strike, so the knowledge that their House could be swamped at the will of the king — at

the will of the people — made the Lords yield to the people.

From the Reform Act the function of the House of Lords has been altered in English history. Before that Act it was, if not a directing Chamber, at least a Chamber of Directors. The leading nobles, who had most influence in the Commons, and swayed the Commons, sat there. Aristocratic influence was so powerful in the House of Commons, that there never was any serious breach of unity. When the Houses quarreled, it was, as in the great Aylesbury case, about their respective privileges, and not about the national policy. The influence of the nobility was then so potent, that it was not necessary to exert it. The English Constitution, though then on this point very different from what it now is, did not even then contain the blunder of the Victorian or of the Swiss Constitution. It had not two Houses of distinct origin; it had two Houses of common origin — two Houses in which the predominant element was the same. The danger of discordance was obviated by a latent unity.

Since the Reform Act the House of Lords has become a revising and suspending House. It can alter bills; it can reject bills on which the House of Commons is not yet thoroughly in earnest — upon which the nation is not yet determined. Their veto is a sort of hypothetical veto. They say, We reject your bill for this once, or these twice, or even these thrice; but if you keep on sending it up, at last we won't reject it. The House has ceased to be one of latent directors, and has become one of temporary rejectors and palpable alterers.

It is the sole claim of the Duke of Wellington to the name of a statesman that he presided over this change. He wished to guide the Lords to their true position, and he did guide them. In 1846, in the crisis of the Corn-Law struggle, and when it was a question whether the House of Lords should resist or yield, he wrote a very curious letter to the late Lord Derby: —

"For many years, indeed from the year 1830, when I

retired from office, I have endeavored to manage the House of Lords upon the principle on which I conceive that the institution exists in the Constitution of the country, that of Conservatism. I have invariably objected to all violent and extreme measures, which is not exactly the mode of acquiring influence in a political party in England, particularly one in opposition to government. I have invariably supported government in Parliament upon important occasions, and have always exercised my personal influence to prevent the mischief of anything like a difference or division between the two Houses,—of which there are some remarkable instances, to which I will advert here, as they will tend to show you the nature of my management, and possibly, in some degree, account for the extraordinary power which I have for so many years exercised, without any apparent claim to it.

"Upon finding the difficulties in which the late King William was involved by a promise made to create peers, the number, I believe, indefinite, I determined myself, and I prevailed upon others, the number very large, to be absent from the House in the discussion of the last stages of the Reform Bill, after the negotiations had failed for the formation of a new administration. This course gave at the time great dissatisfaction to the party; notwithstanding that I believe it saved the existence of the House of Lords at the time and the Constitution of the country.

"Subsequently, throughout the period from 1835 to 1841, I prevailed upon the House of Lords to depart from many principles and systems which they as well as I had adopted and voted on Irish tithes, Irish corporations, and other measures, much to the vexation and annoyance of many. But I recollect one particular measure, the union of the provinces of Upper and Lower Canada, in the early stages of which I had spoken in opposition to the measure, and had protested against it; and in the last stages of it I prevailed upon the House to agree to, and pass it, in order to avoid the injury to the public interests of a dispute between the Houses upon a question of such

importance. Then I supported the measures of the Government, and protected the servant of the Government, Captain Elliot, in China. All of which tended to weaken my influence with some of the party; others, possibly a majority, might have approved of the course which I took. It was at the same time well known that, from the commencement at least of Lord Melbourne's government, I was in constant communication with it, upon all military matters, whether occurring at home or abroad, at all events. But likewise upon many others.

"All this tended, of course, to diminish my influence in the Conservative party, while it tended essentially to the ease and satisfaction of the Sovereign, and to the maintenance of good order. At length came the resignation of the Government by Sir Robert Peel, in the month of December last, and the Queen desiring Lord John Russell to form an administration. On the 12th of December the Queen wrote to me the letter of which I enclose the copy, and the copy of my answer of the same date; of which it appears that you have never seen copies, although I communicated them immediately to Sir Robert Peel. It was impossible for me to act otherwise than is indicated in my letter to the Queen. I am the servant of the Crown and people. I have been paid and rewarded, and I consider myself retained; and that I can't do otherwise than serve as required, when I can do so without dishonor, that is to say, as long as I have health and strength to enable me to serve. But it is obvious that there is, and there must be, an end of all connection and counsel between party and me. I might with consistency, and some may think that I ought to, have declined to belong to Sir Robert Peel's cabinet on the night of the 20th of December. But my opinion is, that if I had, Sir Robert Peel's government would not have been framed; that we should have had —— and —— in office next morning.

"But, at all events, it is quite obvious that when that arrangement comes, which sooner or later must come, there will be an end to all influence on my part over the Conservative party, if I should be so indiscreet as to

attempt to exercise any. You will see, therefore, that the stage is quite clear for you, and that you need not apprehend the consequences of differing in opinion from me when you will enter upon it; as in truth I have, by my letter to the Queen of the 12th of December, put an end to the connection between the party and me, when the party will be in opposition to her Majesty's Government.

"My opinion is, that the great object of all is that you should assume the station, and exercise the influence, which I have so long exercised in the House of Lords. The question is, how is that object to be attained? By guiding their opinion and decision, or by following it? You will see that I have endeavored to guide their opinion, and have succeeded upon some most remarkable occasions. But it has been by a good deal of management.

"Upon the important occasion and question now before the House, I propose to endeavor to induce them to avoid to involve the country in the additional difficulties of a difference of opinion, possibly a dispute between the Houses, on a question in the decision of which it has been frequently asserted that their lordships had a personal interest: which assertion, however false as affecting each of them personally, could not be denied as affecting the proprietors of land in general. I am aware of the difficulty, but I don't despair of carrying the Bill through. You must be the best judge of the course which you ought to take, and of the course most likely to conciliate the confidence of the House of Lords. My opinion is, that you should advise the House to vote that which would tend most to public order, and would be most beneficial to the immediate interests of the country."

This is the mode in which the House of Lords came to be what it now is, a chamber with (in most cases) a veto of delay, with (in most cases) a power of revision, but with no other rights or powers. The question we have to answer is, "The House of Lords being such, what is the use of the Lords"?

The common notion evidently fails, that it is a bulwark against imminent revolution. As the Duke's letter in every line evinces, the wisest members, the guiding members of the House, know that the House must yield to the people if the people is determined. The two cases — that of the Reform Act and the Corn Laws — were decisive cases. The great majority of the Lords thought Reform revolution, Free-trade confiscation, and the two together ruin. If they could ever have been trusted to resist the people, they would then have resisted it. But in truth it is idle to expect a second chamber — a chamber of notables — ever to resist a popular chamber, a nation's chamber, when that chamber is vehement and the nation vehement too. There is no strength in it for that purpose. Every class chamber, every minority chamber, so to speak, feels weak and helpless when the nation is excited. In a time of revolution there are but two powers, the sword and the people. The executive commands the sword; the great lesson which the First Napoleon taught the Parisian populace — the contribution he made to the theory of revolutions at the 18th Brumaire — is now well known. Any strong soldier at the head of the army can use the army. But a second chamber cannot use it. It is a pacific assembly, composed of timid peers, aged lawyers, or, as abroad, clever *littérateurs*. Such a body has no force to put down the nation, and if the nation will have it do something it must do it.

The very nature, too, as has been seen, of the Lords in the English Constitution, shows that it cannot stop revolution. The Constitution contains an exceptional provision to prevent its stopping it. The executive, the appointee of the popular chamber and the nation, can make new peers, and so create a majority in the Peers; it can say to the Lords, "Use the powers of your House as we like, or you shall not use them at all. We will find others to use them; your virtue shall go out of you if it is not used as we like, and stopped when we please." An assembly under such a threat cannot arrest, and could not be intended to arrest, a determined and insisting executive.

In fact the House of Lords, as a House, is not a bulwark that will keep out revolution, but an index that revolution is unlikely. Resting as it does upon old deference and inveterate homage, it shows that the spasm of new forces, the outbreak of new agencies, which we call revolution, is for the time simply impossible. So long as many old leaves linger on the November trees, you know that there has been little frost and no wind: just so while the House of Lords retains much power, you may know that there is no desperate discontent in the country, no wild agency likely to cause a great demolition.

There used to be a singular idea that two chambers — a revising chamber and a suggesting chamber — were essential to a free government. The first person who threw a hard stone — an effectually hitting stone — against the theory was one very little likely to be favorable to democratic influence, or to be blind to the use of aristocracy; it was the present Lord Grey. He had to look at the matter practically. He was the first great colonial minister of England who ever set himself to introduce representative institutions into ALL her capable colonies, and the difficulty stared him in the face that in those colonies there were hardly enough good people for one assembly, and not near enough good people for two assemblies. It happened — and most naturally happened — that a second assembly was mischievous. The second assembly was either the nominee of the Crown, which in such places naturally allied itself with better instructed minds, or was elected by people with a higher property qualification — some peculiarly well-judging people. Both these choosers chose the best men in the colony, and put them into the second assembly. But thus the popular assembly was left without those best men. The popular assembly was denuded of those guides and those leaders who would have led and guided it best. Those superior men were put aside to talk to one another, and perhaps dispute with one another; they were a concentrated instance of high but neutralized forces. They wished to do good, but they could do nothing. The Lower

House, with all the best people in the colony extracted, did what it liked. The democracy was strengthened rather than weakened by the isolation of its best opponents in a weak position. As soon as experience had shown this, or seemed to show it, the theory that two chambers were essential to a good and free government vanished away.

With a perfect Lower House it is certain that an Upper House would be scarcely of any value. If we had an ideal House of Commons perfectly representing the nation, always moderate, never passionate, abounding in men of leisure, never omitting the slow and steady forms necessary for good consideration, it is certain that we should not need a higher chamber. The work would be done so well that we should not want any one to look over or revise it. And whatever is unnecessary in government is pernicious. Human life makes so much complexity necessary that an artificial addition is sure to do harm: you cannot tell where the needless bit of machinery will catch and clog the hundred needful wheels; but the chances are conclusive that it will impede them somewhere, so nice are they and so delicate. But though beside an ideal House of Commons the Lords would be unnecessary, and therefore pernicious, beside the actual House a revising and leisured legislature is extremely useful, if not quite necessary.

At present the chance majorities on minor questions in the House of Commons are subject to no effectual control. The nation never attends to any but the principal matters of policy and State. Upon these it forms that rude, rough, ruling judgment which we call public opinion; but upon other things it does not think at all, and it would be useless for it to think. It has not the materials for forming a judgment: the detail of bills, the instrumental part of policy, the latent part of legislation, are wholly out of its way. It knows nothing about them, and could not find time or labor for the careful investigation by which alone they can be apprehended. A casual majority of the House of Commons has therefore

dominant power: it can legislate as it wishes. And though the whole House of Commons upon great subjects very fairly represents public opinion, and though its judgment upon minor questions is, from some secret excellencies in its composition, remarkably sound and good; yet, like all similar assemblies, it is subject to the sudden action of selfish combinations. There are said to be two hundred "members for the railways" in the present Parliament. If these two hundred choose to combine on a point which the public does not care for, and which they care for because it affects their purse; they are absolute. A formidable sinister interest may always obtain the complete command of a dominant assembly by some chance and for a moment, and it is therefore of great use to have a second chamber of an opposite sort, differently composed, in which that interest in all likelihood will not rule.

The most dangerous of all sinister interests is that of the executive government, because it is the most powerful. It is perfectly possible — it has happened, and will happen again — that the Cabinet, being very powerful in the Commons, may inflict minor measures on the nation which the nation did not like, but which it did not understand enough to forbid. If, therefore, a tribunal of revision can be found in which the executive, though powerful, is less powerful, the government will be the better; the retarding chamber will impede minor instances of parliamentary tyranny, though it will not prevent or much impede revolution.

Every large assembly is, moreover, a fluctuating body: it is not one house, so to say, but a set of houses; it is one set of men to-night and another to-morrow night. A certain unity is doubtless preserved by the duty which the executive is supposed to undertake, and does undertake, of keeping a house; a constant element is so provided about which all sorts of variables accumulate and pass away. But even after due allowance for the full weight of this protective machinery, our House of Commons is, as all such chambers must be, subject to sudden turns and bursts of feeling, because the members who

compose it change from time to time. The pernicious result is perpetual in our legislation; many acts of Parliament are medleys of different motives, because the majority which passed one set of its clauses is different from that which passed another set.

But the greatest defect of the House of Commons is that it has no leisure. The life of the House is the worst of all lives — a life of distracting routine. It has an amount of business brought before it such as no similar assembly ever has had. The British Empire is a miscellaneous aggregate, and each bit of the aggregate brings its bit of business to the House of Commons. It is India one day and Jamaica the next; then again China, and then Sleswig-Holstein. Our legislation touches on all subjects, because our country contains all ingredients. The mere questions which are asked of the ministers run over half human affairs; the Private Bill Acts, the mere PRIVILEGIA of our Government — subordinate as they ought to be — probably give the House of Commons more absolute work than the whole business, both national and private, of any other assembly which has ever sat. The whole scene is so encumbered with changing business, that it is hard to keep your head in it.

Whatever, too, may be the case hereafter, when a better system has been struck out, at present the House does all the work of legislation, all the detail, and all the clauses itself. One of the most helpless exhibitions of helpless ingenuity and wasted mind is a committee of the whole House on a bill of many clauses which eager enemies are trying to spoil, and various friends are trying to mend. An act of Parliament is at least as complex as a marriage settlement; and it is made much as a settlement would be if it were left to the vote and settled by the major part of persons concerned, including the unborn children. There is an advocate for every interest, and every interest clamors for every advantage. The executive government by means of its disciplined forces, and the few invaluable members who sit and

think, preserves some sort of unity. But the result is very imperfect. The best test of a machine is the work it turns out. Let any one who knows what legal documents ought to be, read first a will he has just been making and then an Act of Parliament; he will certainly say, "I would have dismissed my attorney if he had done my business as the legislature has done the nation's business." While the House of Commons is what it is, a good revising, regulating, and retarding house would be a benefit of great magnitude.

But is the House of Lords such a chamber? Does it do this work? This is almost an undiscussed question. The House of Lords, for thirty years at least, has been in popular discussion an accepted matter. Popular passion has not crossed the path, and no vivid imagination has been excited to clear the matter up.

The House of Lords has the greatest merit which such a chamber can have; it is POSSIBLE. It is incredibly difficult to get a revising assembly, because it is difficult to find a class of respected revisers. A federal senate, a second house, which represents State Unity has this advantage; it embodies a feeling at the root of society —a feeling which is older than complicated politics, which is stronger a thousand times over than common political feelings — the LOCAL feeling. "My shirt," said the Swiss state-right patriot, "is dearer to me than my coat." Every State in the American Union would feel that disrespect to the Senate was disrespect to itself. Accordingly, the Senate is respected: whatever may be the merits or demerits of its action, it can act; it is real, independent and efficient. But in common governments it is fatally difficult to make an UNpopular entity powerful in a popular government.

It is almost the same thing to say that the House of Lords is independent. It would not be powerful, it would not be possible, unless it were known to be independent. The Lords are in several respects more independent than the Commons; their judgment may not be so good a judgment, but it is emphatically their own judgment. The

House of Lords, as a body, is accessible to no social bribe. And this, in our day, is no light matter. Many members of the House of Commons, who are to be influenced by no other manner of corruption, are much influenced by this its most insidious sort. The conductors of the press and the writers for it are worse — at least the more influential who come near the temptation; for "position," as they call it, for a certain intimacy with the aristocracy, some of them would do almost anything and say almost anything. But the Lords are those who give social bribes, and not those who take them. They are above corruption because they are the corruptors. They have no constituency to fear or wheedle; they have the best means of forming a disinterested and cool judgment of any class in the country. They have, too, leisure to form it. They have no occupations to distract them which are worth the name. Field sports are but playthings, though some Lords put an Englishman's seriousness into them. Few Englishmen can bury themselves in science or literature; and the aristocracy have less, perhaps, of that IMPETUS than the middle classes. Society is too correct and dull to be an occupation, as in other times and ages it has been. The aristocracy live in the fear of the middle classes — of the grocer and the merchant. They dare not frame a society of enjoyment as the French aristocracy once formed it. Politics are the only occupation a peer has worth the name. He may pursue them undistractedly. The House of Lords, besides independence to revise judicially and position to revise effectually, has leisure to revise intellectually.

These are great merits; and, considering how difficult it is to get a good second chamber, and how much with our present first chamber we need a second, we may well be thankful for them. But we must not permit them to blind our eyes. Those merits of the Lords have faults close beside them which go far to make them useless. With its wealth, its place, and its leisure, the House of Lords would, on the very surface of the matter, rule us far more than it does if it had not secret defects which hamper and weaken it.

The first of these defects is hardly to be called secret, though, on the other hand, it is not well known. A severe though not unfriendly critic of our institutions said that "the CURE for admiring the House of Lords was to go and look at it"—to look at it not on a great party field-day, or at a time of parade, but in the ordinary transaction of business. There are perhaps ten peers in the House, possibly only six; three is the quorum for transacting business. A few more may dawdle in or not dawdle in; those are the principal speakers, the lawyers (a few years ago when Lyndhurst, Brougham, and Campbell were in vigor, they were by far the predominant talkers) and a few statesmen whom everyone knows. But the mass of the House is nothing. This is why orators trained in the Commons detest to speak in the Lords. Lord Chatham used to call it the "Tapestry." The House of Commons is a scene of life if ever there was a scene of life. Every member in the throng, every atom in the medley, has his own objects (good or bad), his own purposes (great or petty); his own notions, such as they are, of what is; his own notions, such as they are, of what ought to be. There is a motley confluence of vigorous elements, but the result is one and good. There is a "feeling of the House," a "sense" of the House, and no one who knows anything of it can despise it. A very shrewd man of the world went so far as to say that "the House of Commons has more sense than any one in it." But there is no such "sense" in the House of Lords, because there is no life. The Lower Chamber is a chamber of eager politicians; the Upper (to say the least) of NOT eager ones.

This apathy is not, indeed, as great as the outside show would indicate. The committees of the Lords (as is well known) do a great deal of work, and do it very well. And such as it is, the apathy is very natural. A House composed of rich men who can vote by proxy without coming will not come very much.* But after every abate-

* In accordance with a recent resolution of the House of Lords, proxies are now disused. NOTE to second edition.

ment the real indifference to their duties of most peers is a great defect, and the apparent indifference is a dangerous defect. As far as politics go there is profound truth in Lord Chesterfield's axiom, that "the world must judge of you by what you seem, not by what you are."

The world knows what you seem; it does not know what you are. An assembly — a revising assembly especially — which does not assemble, which looks as if it does not care how it revises, is defective in a main political ingredient. It may be of use, but it will hardly convince mankind that it is so.

The next defect is even more serious; it affects not simply the apparent work of the House of Lords but the real work. For a revising legislature, it is too uniformly made up. Errors are of various kinds; but the constitution of the House of Lords only guards against a single error — that of too quick change. The Lords — leaving out a few lawyers and a few outcasts — are all landowners of more or less wealth. They all have more or less the opinions, the merits, the faults of that one class. They revise legislation as far as they do revise it, exclusively according to the supposed interests, the predominant feelings, the inherited opinions, of that class. Since the Reform Act, this uniformity of tendency has been very evident. The Lords have felt — it would be harsh to say hostile, but still dubious, as to the new legislation. There was a spirit in it alien to their spirit, and which when they could they have tried to cast out. That spirit is what has been termed the "modern spirit." It is not easy to concentrate its essence in a phrase : it lives in our life, animates our actions, suggests our thoughts. We all know what it means, though it would take an essay to limit it and define it. To this the Lords object; wherever it is concerned, they are not impartial revisers, but biased revisers.

This singleness of composition would be no fault, it would be, or might be, even a merit, if the criticism of the House of Lords, though a suspicious criticism, were yet a criticism of great understanding. The characteristic

legislation of every age must have characteristic defects; it is the outcome of a character, of necessity faulty and limited. It must mistake some kind of things; it must overlook some other. If we could get hold of a complemental critic, a critic who saw what the age did not see, and who saw rightly what the age mistook, we should have a critic of inestimable value. But is the House of Lords that critic? Can it be said that its unfriendliness to the legislation of the age is founded on a perception of what the age does not see, and a rectified perception of what the age does see? The most extreme partisan, the most warm admirer of the Lords, if of fair and tempered mind, cannot say so. The evidence is too strong. On free trade, for example, no one can doubt that the Lords — in opinion, in what they wished to do, and would have done, if they had acted on their own minds — were utterly wrong. This is the clearest test of the "modern spirit." It is easier here to be sure it is right than elsewhere. Commerce is like war; its result is patent. Do you make money or do you not make it? There is as little appeal from figures as from battle. Now no one can doubt that England is a great deal better off because of free trade; that it has more money, and that its money is diffused more as we should wish it diffused. In the one case in which we can unanswerably test the modern spirit, it was right, and the dubious Upper House — the House which would have rejected it, if possible — was wrong.

There is another reason. The House of Lords, being an hereditary chamber, cannot be of more than common ability. It may contain — it almost always has contained, it almost always will contain — extraordinary men. But its average born law-makers cannot be extraordinary. Being a set of eldest sons picked out by chance and history, it cannot be very wise. It would be a standing miracle if such a chamber possessed a knowledge of its age superior to the other men of the age; if it possessed a superior and supplemental knowledge; if it descried what they did not discern, and saw truly that which they saw, indeed, but saw untruly.

The difficulty goes deeper. The task of revising, of adequately revising the legislation of this age, is not only that which an aristocracy has no facility in doing, but one which it has a difficulty in doing. Look at the statute book for 1865 — the statutes at large for the year. You will find, not pieces of literature, not nice and subtle matters, but coarse matters, crude heaps of heavy business. They deal with trade, with finance, with statute-law reform, with common-law reform; they deal with various sorts of business, but with business always. And there is no educated human being less likely to know business, worse placed for knowing business, than a young Lord. Business is really more agreeable than pleasure; it interests the whole mind, the aggregate nature of man more continuously, and more deeply. But it does not LOOK as if it did. It is difficult to convince a young man, who can have the best of pleasure that it will. A young Lord just come into £30,000 a year will not, as a rule, care much for the law of patents, for the law of "passing tolls," or the law of prisons. Like Hercules, he may choose virtue, but hardly Hercules could choose business. He has everything to allure him from it, and nothing to allure him to it. And even if he wish to give himself to business, he has indifferent means. Pleasure is near him, but business is far from him. Few things are more amusing than the ideas of a well-intentioned young man, who is born out of the business world, but who wishes to take to business, about business. He has hardly a notion in what it consists. It really is the adjustment of certain particular means to equally certain particular ends. But hardly any young man destitute of experience is able to separate end and means. It seems to him a kind of mystery; and it is lucky if he do not think that the forms are the main part, and that the end is but secondary. There are plenty of business men, falsely so called, who will advise him so. The subject seems a kind of maze. "What would you recommend me to READ?" the nice youth asks; and it is impossible to explain to him that reading has nothing to do with it, that he has not

yet the original ideas in his mind to read about; that administration is an art as painting is an art; and that no book can teach the practice of either.

Formerly this defect in the aristocracy was hidden by their other advantages. Being the only class at ease for money and cultivated in mind they were without competition; and though they might not be, as a rule, and extraordinary ability excepted, excellent in State business, they were the best that could be had. Even in old times, however, they sheltered themselves from the greater pressure of coarse work. They appointed a manager—a Peel or a Walpole, anything but an aristocrat in manner or in nature—to act for them and manage for them. But now a class is coming up trained to thought, full of money, and yet trained to business. As I write, two members of this class have been appointed to stations considerable in themselves, and sure to lead (if anything is sure in politics) to the cabinet and power. This is the class of highly-cultivated men of business who, after a few years, are able to leave business and begin ambition. As yet these men are few in public life, because they do not know their own strength. It is like Columbus and the egg once again; a few original men will show it can be done, and then a crowd of common men will follow. These men know business partly from tradition, and this is much. There are University families—families who talk of fellowships, and who invest their children's ability in Latin verses as soon as they discover it; there used to be Indian families of the same sort, and will probably be again when the competitive system has had time to foster a new breed. Just so there are business families to whom all that concerns money, all that concerns administration, is as familiar as the air they breathe. All Americans, it has been said, know business; it is in the air of their country. Just so certain classes know business here; and a Lord can hardly know it. It is as great a difficulty to learn business in a palace as it is to learn agriculture in a park.

To one kind of business, indeed, this doctrine does not

apply. There is one kind of business in which our aristocracy have still, and are likely to retain long, a certain advantage. This is the business of diplomacy. Napoleon, who knew men well, would never, if he could help it, employ men of the Revolution in missions to the old courts; he said, "They spoke to no one, and no one spoke to them;" and so they sent home no information. The reason is obvious. The old-world diplomacy of Europe was largely carried on in drawing-rooms, and, to a great extent, of necessity still is so. Nations touch at their summits. It is always the highest class which travels most, knows most of foreign nations, has the least of the territorial sectarianism which calls itself patriotism, and is often thought to be so. Even here, indeed, in England the new trade-class is in real merit equal to the aristocracy. Their knowledge of foreign things is as great, and their contact with them often more. But, notwithstanding, the new race is not as serviceable for diplomacy as the old race. An ambassador is not simply an agent; he is also a spectacle. He is sent abroad for show as well as for substance; he is to represent the Queen among foreign courts and foreign sovereigns. An aristocracy is in its nature better suited to such work: it is trained to the theatrical part of life, it is fit for that if it is fit for anything.

But, with this exception, an aristocracy is necessarily inferior in business to the classes nearer business; and it is not, therefore, a suitable class, if we had our choice of classes, out of which to frame a chamber for revising matters of business. It is indeed a singular example how natural business is to the English race, that the House of Lords works as well as it does. The common appearance of the "whole House" is a jest — a dangerous anomaly, which Mr. Bright will sometimes use; but a great deal of substantial work is done in "Committees," and often very well done. The great majority of the Peers do none of their appointed work, and could do none of it; but a minority — a minority never so large and never so earnest as in this age — do it, and do it well. Still

no one, who examines the matter without prejudice, can say that the work is done perfectly. In a country so rich in mind as England, far more intellectual power can be, and ought to be, applied to the revision of our laws.

And not only does the House of Lords do its work imperfectly, but often, at least, it does it timidly. Being only a section of the nation, it is afraid of the nation. Having been used for years and years, on the greatest matters to act contrary to its own judgment, it hardly knows when to act on that judgment. The depressing languor with which it damps an earnest young Peer is at times ridiculous. "When the Corn Laws are gone, and the rotten boroughs, why tease about Clause IX. in the Bill to regulate Cotton Factories?" is the latent thought of many Peers. A word from the leaders, from "the Duke," or Lord Derby, or Lord Lyndhurst, will rouse on any matters the sleeping energies; but most Lords are feeble and forlorn.

These grave defects would have been at once lessened, and in the course of years nearly effaced, if the House of Lords had not resisted the proposal of Lord Palmerston's first government to create Peers for life. The expedient was almost perfect. The difficulty of reforming an old institution like the House of Lords is necessarily great; its possibility rests on continuous caste and ancient deference. And if you begin to agitate about it, to bawl at meetings about it, that deference is gone, its peculiar charm lost, its reserved sanctity gone. But, by an odd fatality, there was in the recesses of the Constitution an old prerogative which would have rendered agitation needless, which would have effected, without agitation, all that agitation could have effected. Lord Palmerston was, now that he is dead, and his memory can be calmly viewed, as firm a friend to an aristocracy, as thorough an aristocrat, as any in England, yet he proposed to use that power. If the House of Lords had still been under the rule of the Duke of Wellington, perhaps they would have acquiesced. The Duke would not indeed have reflected on all the considerations which a philosophic statesman

would have set out before him; but he would have been brought right by one of his peculiarities. He disliked, above all things, to oppose the Crown. At a great crisis, at the crisis of the Corn Laws, what he considered was not what other people were thinking of, the economical issue under discussion, the welfare of the country hanging in the balance, but the Queen's ease. He thought the Crown so superior a part in the Constitution, that, even on vital occasions, he looked solely — or said he looked solely — to the momentary comfort of the present sovereign. He never was comfortable in opposing a conspicuous act of the Crown. It is very likely that, if the Duke had still been the President of the House of Lords, they would have permitted the Crown to prevail in its well-chosen scheme. But the Duke was dead, and his authority, or some of it, had fallen to a very different person. Lord Lyndhurst had many great qualities; he had a splendid intellect, as great a faculty of finding truth as any one in his generation; but he had no love of truth. With this great faculty of finding truth, he was a believer in error, in what his own party now admit to be error, all his life through. He could have found the truth as a statesman just as he found it when a judge; but he never did find it. He never looked for it. He was a great partisan, and he applied a capacity of argument, and a faculty of intellectual argument rarely equaled, to support the tenets of his party. The proposal to create life-peers was proposed by the antagonistic party, was at the moment likely to injure his own party. To him this was a great opportunity. The speech he delivered on that occasion lives in the memory of those who heard it. His eyes did not at that time let him read, so he repeated by memory, and quite accurately, all the black-letter authorities bearing on the question. So great an intellectual effort has rarely been seen in an English assembly. But the result was deplorable. Not by means of his black-letter authorities, but by means of his recognized authority and his vivid impression, he induced the House of Lords to reject the proposition of the Government. Lord Lyndhurst said the

Crown could not now create life-peers, and so there are no life-peers. The House of Lords rejected the inestimable, the unprecedented opportunity of being tacitly reformed. Such a chance does not come twice. The life-peers who would have been then introduced would have been among the first men in the country. Lord Macaulay was to have been among the first; Lord Wensleydale, the most learned and not the least logical of our lawyers, to be the very first. Thirty or forty such men, added judiciously and sparingly as years went on, would have given to the House of Lords the very element which, as a criticising Chamber, it needs so much. It would have given it critics. The most accomplished men in each department might then, without irrelevant considerations of family and of fortune, have been added to the Chamber of Review The very element which was wanted to the House of Lords was, as it were, by a constitutional providence, offered to the House of Lords, and they refused it By what species of effort that error can be repaired, I cannot tell, but, unless it is repaired, the intellectual capacity can never be what it would have been, will never be what it ought to be, will never be sufficient for its work.

Another reform ought to have accompanied the creation of life-peers. Proxies ought to have been abolished. Some time or other the slack attendance of the House of Lords will destroy the House of Lords. There are occasions in which appearances are realities, and this is one of them. The House of Lords on most days looks so unlike what it ought to be, that most people will not believe it is what it ought to be The attendance of considerate peers will, for obvious reasons, be larger when it can no longer be overpowered by the NON-attendance, by the commissioned votes of inconsiderate peers. The abolition of proxies would have made the House of Lords a real House; the addition of life-peers would have made it a good House.

The greater of these changes would have most materially aided the House of Lords in the performance of

its subsidiary functions. It always perhaps happens in a great nation, that certain bodies of sensible men posted prominently in its constitution, acquire functions, and usefully exercise functions, which, at the outset, no one expected from them, and which do not identify themselves with their original design. This has happened to the House of Lords especially. The most obvious instance is the judicial function. This is a function which no theorist would assign to a second chamber in a new constitution, and which is matter of accident in ours. Gradually, indeed, the unfitness of the second chamber for judicial functions has made itself felt. Under our present arrangements this function is not entrusted to the House of Lords, but to a committee of the House of Lords. On one occasion only, the trial of O'Connell, the whole House, or some few in the whole House, wished to vote, and they were told they could not, or they would destroy the judicial prerogative. No one, indeed, would venture REALLY to place the judicial function in the chance majorities of a fluctuating assembly: it is so by a sleepy theory; it is not so in living fact. As a legal question, too, it is a matter of grave doubt whether there ought to be two supreme courts in this country—the Judicial Committee of the Privy Council, and (what is in fact though not in name) the Judicial Committee of the House of Lords. Up to a very recent time one committee might decide that a man was sane as to money, and the other committee might decide that he was insane as to land. This absurdity has been cured; but the error from which it arose has not been cured—the error of having two supreme courts, to both of which, as time goes on, the same question is sure often enough to be submitted, and each of which is sure every now and then to decide it differently. I do not reckon the judicial function of the House of Lords as one of its true subsidiary functions, first because it does not in fact exercise it, next because I wish to see it in appearance deprived of it. The supreme court of the English people ought to be a great conspicuous tribunal, ought to rule all other courts, ought to have

no competitor, ought to bring our law into unity, ought not to be hidden beneath the robes of a legislative assembly.

The real subsidiary functions of the House of Lords are, unlike its judicial functions, very analogous to its substantial nature. The first is the faculty of criticising the executive. An assembly in which the mass of the members have nothing to lose, where most have nothing to gain, where every one has a social position firmly fixed, where no one has a constituency, where hardly any one cares for the minister of the day, is the very assembly in which to look for, from which to expect, independent criticism. And in matter of fact, we find it. The criticism of the acts of late administrations by Lord Grey has been admirable. But such criticism, to have its full value, should be many-sided. Every man of great ability puts his own mark on his own criticism; it will be full of thought and feeling, but then it is of idiosyncratic thought and feeling. We want many critics of ability and knowledge in the Upper House — not equal to Lord Grey, for they would be hard to find — but like Lord Grey. They should resemble him in impartiality; they should resemble him in clearness; they should most of all resemble him in taking the supplemental view of a subject. There is an actor's view of a subject which (I speak of mature and discussed action — of cabinet action) is nearly sure to include everything old and new — everything ascertained and determinate. But there is also a bystander's view, which is likely to omit some one or more of these old and certain elements, but also to contain some new or distant matter which the absorbed and occupied actor could not see. There ought to be many life-peers in our secondary chamber capable of giving us this higher criticism. I am afraid we shall not soon see them, but as a first step we should learn to wish for them.

The second subsidiary action of the House of Lords is even more important. Taking the House of Commons, not after possible but most unlikely improvements, but in

matter of fact and as it stands, it is overwhelmed with work. The task of managing it falls upon the cabinet, and that task is very hard. Every member of the cabinet in the Commons has to "attend the House"; to contribute by his votes, if not by his voice, to the management of the House. Even in so small a matter as the education department, Mr. Lowe, a consummate observer, spoke of the desirability of finding a chief "not exposed to the prodigious labor of attending the House of Commons." It is all but necessary that certain members of the cabinet should be exempt from its toil, and untouched by its excitement. But it is also necessary that they should have the power of explaining their views to the nation; of being heard as other people are heard. There are various plans for so doing, which I may discuss a little in speaking of the House of Commons. But so much is evident: the House of Lords, for its own members, attains this object; it gives them a voice; it gives them what no competing plan does give them — POSITION. The leisured members of the cabinet speak in the Lords with authority and power. They are not administrators with a right to speech — clerks (as is sometimes suggested) brought down to lecture a House, but not to vote in it; but they are the equals of those they speak to; they speak as they like, and reply as they choose; they address the House, not with the "bated breath" of subordinates, but with the force and dignity of sure rank. Life-peers would enable us to use this faculty of our Constitution more freely and more variously. It would give us a larger command of able leisure; it would improve the Lords as a political pulpit, for it would enlarge the list of its select preachers.

The danger of the House of Commons is, perhaps, that it will be reformed too rashly; the danger of the House of Lords certainly is, that it may never be reformed. Nobody asks that it should be so; it is quite safe against rough destruction, but it is not safe against inward decay. It may lose its veto as the Crown has lost its veto. If most of its members neglect their duties, if all its members continue to be of one class, and that

not quite the best; if its doors are shut against genius that cannot found a family, and ability which has not five thousand a year, its power will be less year by year, and at last be gone, as so much kingly power is gone—no one knows how. Its danger is not in assassination, but atrophy; not abolition, but decline.

V.

THE HOUSE OF COMMONS.

The dignified aspect of the House of Commons is altogether secondary to its efficient use. It is dignified: in a government in which the most prominent parts are good because they are very stately, any prominent part, to be good at all, must be somewhat stately. The human imagination exacts keeping in government as much as in art; it will not be at all influenced by institutions which do not match with those by which it is principally influenced. The House of Commons needs to be impressive, and impressive it is: but its use resides not in its appearance, but in its reality. Its office is not to win power by awing mankind, but to use power in governing mankind.

The main function of the House of Commons is one which we know quite well, though our common constitutional speech does not recognize it. The House of Commons is an electoral chamber; it is the assembly which chooses our president. Washington and his fellow-politicians contrived an Electoral College, to be composed (as was hoped) of the wisest people in the nation, which, after due deliberation, was to choose for President the wisest man in the nation. But that college is a sham; it has no independence and no life. No one knows, or cares to know, who its members are. They never discuss, and never deliberate. They were chosen to vote that Mr. Lincoln be President, or that Mr. Breckenridge be President; they do so vote, and they go home. But our House of Commons is a real choosing body; it elects the people it likes. And it dismisses whom it likes too. No matter that a few months since it was chosen to support Lord Aberdeen or Lord Palmerston;

upon a sudden occasion it outs the statesman to whom it at first adhered, and selects an opposite statesman whom it at first rejected. Doubtless in such cases there is a tacit reference to probable public opinion; but certainly also there is much free will in the judgment of the Commons. The House only goes where it thinks in the end the nation will follow; but it takes its chance of the nation following or not following; it assumes the initiative, and acts upon its discretion or its caprice.

When the American nation has chosen its President, its virtue goes out of it, and out of the Transmissive College through which it chooses. But because the House of Commons has the power of dismissal in addition to the power of election, its relations to the Premier are incessant. They guide him, and he leads them. He is to them what they are to the nation. He only goes where he believes they will go after him. But he has to take the lead; he must choose his direction, and begin the journey. Nor must he flinch. A good horse likes to feel the rider's bit; and a great deliberative assembly likes to feel that it is under worthy guidance. A minister who succumbs to the House, who ostentatiously seeks its pleasure, who does not try to regulate it, who will not boldly point out plain errors to it, seldom thrives. The great leaders of Parliament have varied much, but they have all had a certain firmness. A great assembly is as soon spoiled by over-indulgence as a little child. The whole life of English politics is the action and reaction between the ministry and the Parliament. The appointees strive to guide, and the appointors surge under the guidance.

The elective is now the most important function of the House of Commons. It is most desirable to insist, and be tedious, on this, because our tradition ignores it. At the end of half the sessions of Parliament, you will read in the newspapers, and you will hear even from those who have looked close at the matter and should know better, "Parliament has done nothing this session.

Some things were promised in the Queen's speech, but they were only little things; and most of them have not passed." Lord Lyndhurst used for years to recount the small outcomings of legislative achievement; and yet those were the days of the first Whig Governments, who had more to do in the legislation, and did more, than any Government. The true answer to such harangues as Lord Lyndhurst's by a minister should have been in the first person. He should have said firmly, "Parliament has maintained ME, and that was its greatest duty; Parliament has carried on what, in the language of traditional respect, we call the Queen's Government; it has maintained what wisely or unwisely it deemed the best executive of the English nation."

The second function of the House of Commons is what I may call an expressive function. It is its office to express the mind of the English people on all matters which come before it. Whether it does so well or ill I shall discuss presently.

The third function of Parliament is what I may call — preserving a sort of technicality even in familiar matters for the sake of distinctness — the teaching function. A great and open council of considerable men cannot be placed in the middle of a society without altering that society. It ought to alter it for the better. It ought to teach the nation what it does not know. How far the House of Commons can so teach, and how far it does so teach, are matters for subsequent discussion.

Fourthly, the House of Commons has what may be called an informing function — a function which though in its present form quite modern, is singularly analogous to a mediæval function. In old times one office of the House of Commons was to inform the sovereign what was wrong. It laid before the Crown the grievances and complaints of particular interests. Since the publication of the Parliamentary debates a corresponding office of Parliament is to lay these same grievances, these same complaints, before the nation, which is the present sovereign. The nation needs it quite as much as the king

ever needed it. A free people is indeed mostly fair, liberty practices men in a give-and-take, which is the rough essence of justice. The English people, possibly even above other free nations, is fair. But a free nation rarely can be — and the English nation is not — quick of apprehension. It only comprehends what is familiar to it — what comes into its own experience, what squares with its own thoughts. "I never heard of such a thing in my life," the middle-class Englishman says, and he thinks he so refutes an argument. The common disputant cannot say in reply that his experience is but limited, and that the assertion may be true, though he had never met with anything at all like it. But a great debate in Parliament DOES bring home something of this feeling. Any notion, any creed, any feeling, any grievance, which can get a decent number of English members to stand up for it, is felt by almost all Englishmen to be perhaps a false and pernicious opinion, but at any rate possible — an opinion within the intellectual sphere, an opinion to be reckoned with. And it is an immense achievement. Practical diplomatists say that a free government is harder to deal with than a despotic government: you may be able to get the despot to hear the other side; his ministers, men of trained intelligence, will be sure to know what makes against them; and they MAY tell him. But a free nation never hears any side save its own. The newspapers only repeat the side their purchasers like: the favorable arguments are set out, elaborated, illustrated; the adverse arguments maimed, misstated, confused. The worst judge, they say, is a deaf judge; the most dull government is a free government on matters its ruling classes will not hear. I am disposed to reckon it as the second function of Parliament in point of importance, that to some extent it makes us hear what otherwise we should not.

Lastly, there is the function of legislation, of which of course, it would be preposterous to deny the great importance, and which I only deny to be AS important as the executive management of the whole state, or the political education given by Parliament to the whole nation.

There are, I allow, seasons when legislation is more important than either of these. The nation may be misfitted with its laws, and need to change them: some particular corn law may hurt all industry, and it may be worth a thousand administrative blunders to get rid of it. But generally the laws of a nation suit its life; special adaptations of them are but subordinate; the administration and conduct of that life is the matter which presses most. Nevertheless, the statute-book of every great nation yearly contains many important new laws, and the English statute-book does so above any. An immense mass, indeed, of the legislation is not, in the proper language of jurisprudence, legislation at all. A law is a general command applicable to many cases. The "special acts" which crowd the statute-book and weary parliamentary committees are applicable to one case only. They do not lay down rules according to which railways shall be made, they enact that such a railway shall be made from this place to that place, and they have no bearing upon any other transaction. But after every deduction and abatement, the annual legislation of Parliament is a result of singular importance; were it not so, it could not be, as it often is considered, the sole result of its annual assembling.

Some persons will perhaps think that I ought to enumerate a sixth function of the House of Commons — a financial function. But I do not consider that, upon broad principle, and omitting legal technicalities, the House of Commons has any special function with regard to financial different from its functions with respect to other legislation. It is to rule in both, and to rule in both through the cabinet. Financial legislation is of necessity a yearly recurring legislation; but frequency of occurrence does not indicate a diversity of nature or compel an antagonism of treatment.

In truth, the principal peculiarity of the House of Commons in financial affairs is now-a-days not a special privilege, but an exceptional disability. On common subjects any member can propose anything, but not on money —

the minister only can propose to tax the people. This principle is commonly involved in mediæval metaphysics as to the prerogative of the Crown, but it is as useful in the nineteenth century as in the fourteenth, and rests on as sure a principle. The House of Commons — now that it is the true sovereign, and appoints the real executive — has long ceased to be the checking, sparing, economical body it once was. It now is more apt to spend money than the minister of the day. I have heard a very experienced financier say, "If you want to raise a certain cheer in the House of Commons make a general panegyric on economy; if you want to invite a sure defeat, propose a particular saving." The process is simple. Every expenditure of public money has some apparent public object; those who wish to spend the money expatiate on that object; they say, "What is £50,000 to this great country? Is this a time for cheeseparing objection? Our industry was never so productive; our resources never so immense. What is £50,000 in comparison with this great national interest?" The members who are for the expenditure always come down; perhaps a constituent or a friend who will profit by the outlay, or is keen on the object, has asked them to attend; at any rate, there is a popular vote to be given, on which the newspapers — always philanthropic, and sometimes talked over — will be sure to make encomiums. The members against the expenditure rarely come down of themselves; why should they become unpopular without reason? The object seems decent; many of its advocates are certainly sincere; a hostile vote will make enemies, and be censured by the journals. If there were not some check, the "people's house" would soon outrun the people's money.

That check is the responsibility of the cabinet for the national finance. If anyone could propose a tax, they might let the House spend it as it would, and wash their hands of the matter; but now, for whatever expenditure is sanctioned — even when it is sanctioned against the ministry's wish — the ministry must find the money. Accordingly, they have the strongest motive to oppose extra

outlay. They will have to pay the bill for it; they will have to impose taxation, which is always disagreeable, or suggest loans which, under ordinary circumstances, are shameful. The ministry is (so to speak) the breadwinner of the political family, and has to meet the cost of philanthropy and glory, just as the head of a family has to pay for the charities of his wife and the toilette of his daughters.

In truth, when a cabinet is made the sole executive, it follows it must have the sole financial charge, for all action costs money, all policy depends on money, and it is in adjusting the relative goodness of action and policies that the executive is employed.

From a consideration of these functions, it follows that we are ruled by the House of Commons; we are, indeed, so used to be so ruled, that it does not seem to be at all strange. But of all odd forms of government, the oddest really is government by a PUBLIC MEETING. Here are 658 persons, collected from all parts of England, different in nature, different in interests, different in look and language. If we think what an empire the English is, how various are its components, how incessant its concerns, how immersed in history its policy; if we think what a vast information, what a nice discretion, what a consistent will ought to mark the rulers of that empire, we shall be surprised when we see them. We see a changing body of miscellaneous persons, sometimes few, sometimes many, never the same for an hour; sometimes excited, but mostly dull and half weary, impatient of eloquence, catching at any joke as an alleviation. These are the persons who rule the British empire, who rule England, who rule Scotland, who rule Ireland, who rule a great deal of Asia, who rule a great deal of Polynesia, who rule a great deal of America, and scattered fragments everywhere.

Paley said many shrewd things, but he never said a better thing than that it was much harder to make men see a difficulty than comprehend the explanation of it. The key to the difficulties of most discussed and unsettled

questions is commonly in their undiscussed parts; they are like the background of a picture which looks obvious, easy, just what any one might have painted, but which, in fact, sets the figures in their right position, chastens them, and makes them what they are. Nobody will understand parliament government who fancies it an easy thing, a natural thing, a thing not needing explanation. You have not a perception of the first elements in this matter till you know that government by a CLUB is a standing wonder.

There has been a capital illustration lately how helpless many English gentlemen are when called together on a sudden. The Government, rightly or wrongly, thought fit to entrust the quarter-sessions of each county with the duty of combating its cattle plague; but the scene in most "shire halls" was unsatisfactory. There was the greatest difficulty in getting, not only a right decision, but ANY decision. I saw one myself which went thus. The chairman proposed a very complex resolution, in which there was much which every one liked, and much which every one disliked, though, of course, the favorite parts of some were the objectionable parts to others. This resolution got, so to say, wedged in the meeting; everybody suggested amendments; one amendment was carried which none were satisfied with, and so the matter stood over. It is a saying in England, "a big meeting never does anything"; and yet we are governed by the House of Commons — by "a big meeting."

It may be said that the House of Commons does not rule, it only elects the rulers. But there must be something special about it to enable it to do that. Suppose the cabinet were elected by a London club, what confusion there would be, what writing and answering! "Will you speak to So-and-So, and ask him to vote for my man?" would be heard on every side. How the wife of A. and the wife of B. would plot to confound the wife of C. Whether the club elected under the dignified shadow of a queen, or without the shadow, would hardly matter at all; if the substantial choice was in them, the

confusion and intrigue would be there too. I propose to begin this paper by asking, not why the House of Commons governs well? but the fundamental — almost unasked-question — how the House of Commons comes to be able to govern at all?

The House of Commons can do work which the quarter-sessions or clubs cannot do, because it is an organized body while quarter-sessions and clubs are unorganized. Two of the greatest orators in England — Lord Brougham and Lord Bolingbroke — spent much eloquence in attacking party government. Bolingbroke probably knew what he was doing; he was a consistent opponent of the power of the Commons; he wished to attack them in a vital part. But Lord Brougham does not know he proposes to amend parliamentary government by striking out the very elements which make parliamentary government possible. At present the majority of Parliament obey certain leaders; what those leaders propose they support, what those leaders reject they reject. An old Secretary of the Treasury used to say, "This is a bad case, an indefensible case. We must apply our MAJORITY to this question." That secretary lived fifty years ago, before the Reform Bill, when majorities were very blind, and very "applicable." Now-a-days, the power of leaders over their followers is strictly and wisely limited: they can take their followers but a little way, and that only in certain directions. Yet still there are leaders and followers. On the Conservative side of the House there are vestiges of the despotic leadership even now. A cynical politician is said to have watched the long row of county members, so fresh and respectable-looking, and muttered, "By Jove, they are the finest brute votes in Europe!" But all satire apart, the principle of Parliament is obedience to leaders. Change your leader if you will, take another if you will, but obey No. 1 while you serve No. 1, and obey No. 2 when you have gone over to No. 2. The penalty of not doing so, is the penalty of impotence. It is not that you will not be able to do any good, but you will not be able to do anything at all. If everybody does

what he thinks right, there will be 657 amendments to every motion, and none of them will be carried or the motion either.

The moment, indeed, that we distinctly conceive that the House of Commons is mainly and above all things an elective assembly, we at once perceive that party is of its essence. There never was an election without a party. You cannot get a child into an asylum without a combination. At such places you may see "Vote for orphan A." upon a placard, and "Vote for orphan B. (also an idiot ! ! !)" upon a banner, and the party of each is busy about its placard and banner. What is true at such minor and momentary elections must be much more true in a great and constant election of rulers. The House of Commons lives in a state of perpetual potential choice; at any moment it can choose a ruler and dismiss a ruler. And therefore party is inherent in it, is bone of its bone, and breath of its breath.

Secondly, though the leaders of party no longer have the vast patronage of the last century with which to bribe, they can coerce by a threat far more potent than any allurement—they can dissolve. This is the secret which keeps parties together. Mr. Cobden most justly said, "He had never been able to discover what was the proper moment, according to members of Parliament, for a dissolution. He had heard them say they were ready to vote for everything else, but he had never heard them say they were ready to vote for that." Efficiency in an assembly requires a solid mass of steady votes; and these are COLLECTED by a deferential attachment to particular men, or by a belief in the principles those men represent, and they are MAINTAINED by fear of those men—by the fear that if you vote against them, you may yourself soon not have a vote at all.

Thirdly, it may seem odd to say so, just after inculcating that party organization is the vital principle of representative government, but that organization is permanently efficient, because it is not composed of warm partisans. The body is eager, but the atoms are cool. If it were

otherwise, parliamentary government would become the worst of governments — a sectarian government. The party in power would go all the lengths their orators proposed — all that their formulæ enjoined, as far as they had ever said they would go. But the partisans of the English Parliament are not of such a temper. They are Whigs, or Radicals, or Tories, but they are much else too. They are common Englishmen, and, as Father Newman complains, "hard to be worked up to the dogmatic level." They are not eager to press the tenets of their party to impossible conclusions. On the contrary, the way to lead them — the best and acknowledged way — is to affect a studied and illogical moderation. You may hear men say, "Without committing myself to the tenet that 3+2 make 5, though I am free to admit that the honorable member for Bradford has advanced very grave arguments in behalf of it, I think I may, with the permission of the Committee, assume that 2+3 do not make 4, which will be a sufficient basis for the important propositions which I shall venture to submit on the present occasion." This language is very suitable to the greater part of the House of Commons. Most men of business love a sort of twilight. They have lived all their lives in an atmosphere of probabilities and of doubt, where nothing is very clear, where there are some chances for many events, where there is much to be said for several courses, where nevertheless one course must be determinedly chosen and fixedly adhered to. They like to hear arguments suited to this intellectual haze. So far from caution or hesitation in the statement of the argument striking them as an indication of imbecility, it seems to them a sign of practicality. They got rich themselves by transactions of which they could not have stated the argumentative ground — and all they ask for is a distinct, though moderate conclusion, that they can repeat when asked; something which they feel NOT to be abstract argument, but abstract argument diluted and dissolved in real life. "There seem to me," an impatient young man once said, "to be no stays in Peel's arguments." And that was why Sir Robert

Peel was the best leader of the Commons in our time; we like to have the rigidity taken out of an argument, and the substance left.

Nor indeed, under our system of government, are the leaders themselves of the House of Commons, for the most part, eager to carry party conclusions too far. They are in contact with reality. An Opposition, on coming into power, is often like a speculative merchant whose bills become due. Ministers have to make good their promises, and they find a difficulty in so doing. They have said the state of things is so and so, and if you give us the power we will do thus and thus. But when they come to handle the official documents, to converse with the permanent under-secretary — familiar with disagreeable facts, and though in manner most respectful, yet most imperturbable in opinion — very soon doubts intervene. Of course, something must be done: the speculative merchant cannot forget his bills; the late Opposition cannot, in office, forget those sentences which terrible admirers in the country still quote. But just as the merchant asks his debtor, "Could you not take a bill at four months"? so the new minister says to the permanent under-secretary, "Could you not suggest a middle course? I am of course not bound by mere sentences used in debate; I have never been accused of letting a false ambition of consistency warp my conduct; but," etc., etc. And the end always is, that a middle course is devised which LOOKS as much as possible like what was suggested in opposition, but which IS as much as possible what patent facts — facts which seem to live in the office, so teasing and unceasing are they — prove ought to be done.

Of all modes of enforcing moderation on a party, the best is to contrive that the members of that party shall be intrinsically moderate, careful, and almost shrinking men; and the next best to contrive, that the leaders of the party, who have protested most in its behalf, shall be placed in the closest contact with the actual world. Our English system contains both contrivances: it makes party

government permanent and possible in the sole way in which it can be so, by making it mild.

But these expedients, though they sufficiently remove the defects which make a common club or quarter-sessions impotent, would not enable the House of Commons to govern England. A representative public meeting is subject to a defect over and above those of other public meetings. It may not be independent. The constituencies may not let it alone. But if they do not, all the checks which have been enumerated upon the evils of a party organization would be futile. The feeling of a constituency is the feeling of a dominant party, and that feeling is elicited, stimulated, sometimes even manufactured by the local political agent. Such an opinion could not be moderate; could not be subject to effectual discussion; could not be in close contact with pressing facts; could not be framed under a chastening sense of near responsibility; could not be formed as those form their opinions who have to act upon them. Constituency government is the precise opposite of parliamentary government. It is the government of immoderate persons far from the scene of action, instead of the government of moderate persons close to the scene of action; it is the judgment of persons judging in the last resort and without a penalty, in lieu of persons judging in fear of a dissolution, and ever conscious that they are subject to an appeal.

Most persons would admit these conditions of parliamentary government when they read them, but two at least of the most prominent ideas in the public mind are inconsistent with them. The scheme to which the arguments of our demagogues distinctly tend, and the scheme to which the predilections of some most eminent philosophers cleave, are both so. They would not only make parliamentary government work ill, but they would prevent its working at all; they would not render it bad, for they would make it impossible.

The first of these is the ultra-democratic theory. This theory demands that every man of twenty-one years of age (if not every woman, too) should have an equal

vote in electing Parliament. Suppose that last year there were twelve millions adult males in England. Upon this theory each man is to have one twelve-millionth share in electing a Parliament; the rich and wise are not to have, by explicit law, more votes than the poor and stupid; nor are any latent contrivances to give them an influence equivalent to more votes. The machinery for carrying out such a plan is very easy. At each census the country ought to be divided into 658 electoral districts, in each of which the number of adult males should be the same; and these districts ought to be the only constituencies, and elect the whole Parliament. But if the above pre-requisites are needful for parliamentary government, that Parliament would not work.

Such a Parliament could not be composed of moderate men. The electoral districts would be, some of them, in purely agricultural places, and in these the parson and the squire would have almost unlimited power. They would be able to drive or send to the poll an entire laboring population. These districts would return an unmixed squirearchy. The scattered small towns, which now send so many members to Parliament would be lost in the clownish mass; their votes would send to Parliament no distinct members. The agricultural part of England would choose its representatives from quarter-sessions exclusively. On the other hand, a large part of the constituencies would be town districts; and these would send up persons representing the beliefs or the unbeliefs of the lowest classes in their towns. They would, perhaps, be divided between the genuine representatives of the artisan — not possibly of the best of the artisans, who are a select and intellectual class, but of the common order of work-people — and the merely pretended members for that class, whom I may call the members for the public houses. In all big towns in which there is electioneering these houses are the centres of illicit corruption and illicit management. There are pretty good records of what that corruption and management are, but there is no need to describe them here. Everybody will understand

what sort of things I mean, and the kind of unprincipled members that are returned by them. Our new Parliament, therefore, would be made up of two sorts of representatives from the town lowest class, and one sort of representatives from the agricultural lowest class. The genuine representatives of the country would be men of one marked sort, and the genuine representatives for the county men of another marked sort, but very opposite; one would have the prejudices of town artisans, and the other the prejudices of the county magistrates. Each class would speak a language of its own; each would be unintelligible to the other; and the only thriving class would be the immoral representatives, who were chosen by corrupt machination, and who would probably get a good profit on the capital they laid out in that corruption. If it be true that a parliamentary government is possible only when the overwhelming majority of the representatives are men essentially moderate, of no marked varieties, free from class prejudices, this ultra-democratic Parliament could not maintain that government, for its members would be remarkable for two sorts of moral violence and one sort of immoral.

I do not for a moment rank the scheme of Mr. Hare with the scheme of the ultra-democrats. One can hardly help having a feeling of romance about it. The world seems growing young when grave old lawyers and mature philosophers propose a scheme promising so much. It is from these classes that young men suffer commonly the chilling demonstration that their fine plans are opposed to rooted obstacles, that they are repetitions of other plans which failed long ago, and that we must be content with the very moderate results of tried machinery. But Mr. Hare and Mr. Mill offer as the effect of their new scheme results as large and improvements as interesting as a young enthusiast ever promised to himself in his happiest mood.

I do not give any weight to the supposed impracticability of Mr. Hare's scheme because it is new. Of course it cannot be put in practice till it is old. A great change of this

sort happily cannot be sudden; a free people cannot be confused by new institutions which they do not understand, for they will not adopt them till they understand them. But if Mr. Hare's plan would accomplish what its friends say, or half what they say, it would be worth working for, if it were not adopted till the year 1966. We ought incessantly to popularize the principle by writing; and, what is better than writing, small preliminary bits of experiment. There is so much that is wearisome and detestable in all other election machineries, that I well understand, and wish I could share, the sense of relief with which the believers in this scheme throw aside all their trammels, and look to an almost ideal future, when this captivating plan is carried.

Mr. Hare's scheme cannot be satisfactorily discussed in the elaborate form in which he presents it. No common person readily apprehends all the details in which, with loving care, he has embodied it. He was so anxious to prove what could be done, that he has confused most people as to what it is. I have heard a man say, "He never could remember it two days running." But the difficulty which I feel is fundamental, and wholly independent of detail.

There are two modes in which constituencies may be made. First, the law may make them, as in England and almost everywhere: the law may say such and such qualifications shall give a vote for constituency X; those who have that qualification shall BE constituency X. These are what we may call compulsory constituencies, and we know all about them. Or, secondly, the law may leave the electors themselves to make them. The law may say all the adult males of a country shall vote, or those males who can read and write, or those who have £50 a year, or any persons any way defined, and then leave those voters to group themselves as they like. Suppose there were 658,000 voters to elect the House of Commons; it is possible for the legislature to say, "We do not care how you combine. On a given day let each set of persons give notice in what group they mean to

vote; if every voter gives notice, and every one looks to make the most of his vote, each group will have just 1,000. But the law shall not make this necessary — it shall take the 658 most numerous groups, no matter whether they have 2,000, or 1,000, or 900, or 800 votes — the most numerous groups, whatever their number may be; and these shall be the constituencies of the nation." These are voluntary constituencies, if I may so call them; the simplest kind of voluntary constituencies. Mr. Hare proposes a far more complex kind; but to show the merits and demerits of the voluntary principle the simplest form is much the best.

The temptation to that principle is very plain. Under the compulsory form of constituency the votes of the minorities are thrown away. In the city of London, now, there are many Tories, but all the members are Whigs; every London Tory, therefore, is by law and principle misrepresented: his city sends to Parliament not the member whom he wished to have, but the member he wished NOT to have. But upon the voluntary system the London Tories, who are far more than 1,000 in number, may combine; they may make a constituency, and return a member. In many existing constituencies the disfranchisement of minorities is hopeless and chronic. I have myself had a vote for an agricultural county for twenty years, and I am a Liberal; but two Tories have always been returned, and all my life will be returned. As matters now stand, my vote is of no use, but if I could combine with 1,000 other Liberals in that and other Conservative counties, we might choose a Liberal member.

Again, this plan gets rid of all our difficulties as to the size of constituencies. It is said to be unreasonable that Liverpool should return only the same number of members as King's Lynn or Lyme Regis; but upon the voluntary plan, Liverpool could come down to King's Lynn. The Liberal minority in King's Lynn could communicate with the Liberal minority in Liverpool, and make up 1,000; and so everywhere. The numbers of popular

places would gain what is called their legitimate advantage; they would, when constituencies are voluntarily made, be able to make, and be willing to make, the greatest number of constituencies.

Again, the admirers of a great man could make a worthy constituency for him. As it is, Mr. Mill was returned by the electors of Westminster; and they have never, since they had members, done themselves so great an honor. But what did the electors of Westminster know of Mr. Mill? What fraction of his mind could be imagined by any percentage of their minds? A great deal of his genius most of them would not like. They meant to do homage to mental ability, but it was the worship of an unknown god—if ever there was such a thing in this world. But upon the voluntary plan, one thousand out of the many thousand students of Mr. Mill's book could have made an appreciating constituency for him.

I could reckon other advantages, but I have to object to the scheme, not to recommend it. What are the counterweights which overpower these merits? I reply that the voluntary composition of constituencies appears to me inconsistent with the necessary pre-requisites of parliamentary government as they have been just laid down.

Under the voluntary system, the crisis of politics is not the election of the member, but the making the constituency. President-making is already a trade in America; and constituency-making would, under the voluntary plan be a trade here. Every party would have a numerical problem to solve. The leaders would say, "We have 350,000 votes, we must take care to have 350 members;" and the only way to obtain them is to organize. A man who wanted to compose part of a liberal constituency must not himself hunt for 1,000 other Liberals; if he did, after writing 10,000 letters, he would probably find he was making part of a constituency of 100, all whose votes would be thrown away, the constituency being too small to be reckoned. Such a Liberal must write to the great Registration Association in Parliament Street; he must

communicate with its able managers, and they would soon use his vote for him. They would say, "Sir, you are late; Mr. Gladstone, sir, is full. He got his 1,000 last year. Most of the gentlemen you read of in the papers are full. As soon as a gentleman makes a nice speech, we get a heap of letters to say, 'Make us into that gentleman's constituency.' But we cannot do that. Here is our list. If you do not want to throw your vote away, you must be guided by us: here are three very satisfactory gentlemen (and one is an Honorable): you may vote for either of these, and we will write your name down; but if you go voting wildly, you'll be thrown out altogether."

The evident result of this organization would be the return of party men mainly. The member-makers would look, not for independence, but for subservience — and they could hardly be blamed for so doing. They are agents for the Liberal party; and, as such, they should be guided by what they take to be the wishes of their principal. The mass of the Liberal party wishes measure A, measure B, measure C. The managers of the registration — the skilled manipulators — are busy men. They would say, "Sir, here is our card; if you want to get into Parliament on our side, you must go for that card; it was drawn up by Mr. Lloyd; he used to be engaged on railways, but since they passed this new voting plan, we get him to attend to us; it is a sound card; stick to that and you will be right." Upon this (in theory) voluntary plan, you would get together a set of members bound hard and fast with party bands and fetters, infinitely tighter than any members now.

Whoever hopes anything from desultory popular action if matched against systematized popular action, should consider the way in which the American President is chosen. The plan was that the citizens at large should vote for the statesman they liked best. But no one does anything of the sort. They vote for the ticket made by "the caucus," and the caucus is a sort of representative meeting which sits voting and voting till they have cut

out all the known men against whom much is to be said, and agreed on some unknown man against whom there is nothing known, and therefore nothing to be alleged. Caucuses, or their equivalent, would be far worse here in constituency-making than there in President-making, because on great occasions the American nation can fix on some one great man whom it knows, but the English nation could not fix on 658 great men and choose them. It does not know so many, and if it did, would go wrong in the difficulties of the manipulation.

But though a common voter could only be ranged in an effectual constituency, and a common candidate only reach a constituency by obeying the orders of the political election-contrivers upon his side, certain voters and certain members would be quite independent of both. There are organizations in this country which would soon make a set of constituencies for themselves. Every chapel would be an office for vote transferring before the plan had been known three months. The Church would be much slower in learning it, and much less handy in using it; but would learn. At present the Dissenters are a most energetic and valuable component of the Liberal party; but under the voluntary plan they would not be a component — they would be a separate, independent element. We now propose to group boroughs; but then they would combine chapels. There would be a member for the Baptist congregation of Tavistock, cum Totnes, cum, etc., etc.

The full force of this cannot be appreciated except by referring to the former proof that the mass of a Parliament ought to be men of moderate sentiments, or they will elect an immoderate ministry, and enact violent laws. But upon the plan suggested, the House would be made up of party politicians selected by a party committee, chained to that committee and pledged to party violence, and of characteristic, and therefore immoderate representatives, for every "ism" in all England. Instead of a deliberate assembly of moderate and judicious men, we should have a various compound of all sorts of violence.

I may seem to be drawing a caricature, but I have not reached the worst. Bad as these members would be, if they were left to themselves — if, in a free Parliament, they were confronted with the perils of government, close responsibility might improve them and make them tolerable. But they would not be left to themselves. A voluntary constituency will nearly always be a despotic constituency. Even in the best case, where a set of earnest men choose a member to expound their earnestness, they will look after him to see that he does expound it. The members will be like the minister of a dissenting congregation. That congregation is collected by a unity of sentiment in doctrine A, and the preacher is to preach doctrine A; if he does not, he is dismissed. At present the member is free because the constituency is not in earnest: no constituency has an acute, accurate doctrinal creed in politics. The law made the constituencies by geographical divisions; and they are not bound together by close unity of belief. They have vague preferences for particular doctrines; and that is all. But a voluntary constituency would be a church with tenets; it would make its representative the messenger of its mandates, and the delegate of its determinations. As in the case of a dissenting congregation, one great minister sometimes rules it, while ninety-nine ministers in the hundred are ruled by it, so here one noted man would rule his electors, but the electors would rule all the others.

Thus the members for a good voluntary constituency would be hopelessly enslaved, because of its goodness; but the members for a bad voluntary constituency would be yet more enslaved because of its badness. The makers of these constituencies would keep the despotism in their own hands. In America there is a division of politicians into wire-pullers and blowers; under the voluntary system the member of Parliament would be the only momentary mouth-piece — the impotent blower; while the constituency-maker would be the latent wire-puller — the constant autocrat. He would write to gentlemen in Parliament,

and say, "You were elected upon 'the Liberal ticket;' if you deviate from that ticket you cannot be chosen again." And there would be no appeal for a common-minded man. He is no more likely to make a constituency for himself than a mole is likely to make a planet.

It may indeed be said that against a septennial Parliament such machinations would be powerless; that a member elected for seven years might defy the remonstrances of an earnest constituency, or the imprecations of the latent manipulators. But after the voluntary composition of constituencies, there would soon be but short-lived Parliaments. Earnest constituencies would exact frequent election; they would not like to part with their virtue for a long period; it would anger them to see it used contrary to their wishes, amid circumstances which at the election no one thought of. A seven years' Parliament is often chosen in one political period, lasts through a second, and is dissolved in a third. A constituency collected by law and on compulsion endures this change because it has no collective earnestness; it does not mind seeing the power it gave used in a manner that it could not have foreseen. But a self-formed constituency of eager opinions, a missionary constituency, so to speak, would object; it would think it its bounden duty to object; and the crafty manipulators, though they said nothing, in silence would object still more. The two together would enjoin annual elections, and would rule their members unflinchingly.

The voluntary plan, therefore, when tried in this easy form, is inconsistent with the extrinsic independence as well as with the inherent moderation of a Parliament — two of the conditions which, as we have seen, are essential to the bare possibility of parliamentary government. The same objections, as is inevitable, adhere to that principle under its more complicated forms. It is in vain to pile detail on detail when the objection is one of first principle. If the above reasoning be sound, compulsory constituencies are necessary, voluntary constituencies destructive; the optional transferability of votes is not a salutary aid, but a ruinous innovation.

I have dwelt upon the proposal of Mr. Hare and upon the ultra-democratic proposal, not only because of the high intellectual interest of the former and the possible practical interest of the latter, but because they tend to bring into relief two at least of the necessary conditions of parliamentary government. But besides these necessary qualities which are needful before a parliamentary government can work at all, there are some additional prerequisites before it can work well. That a House of Commons may work well it must perform, as we saw, five functions well: it must elect a ministry well, legislate well, teach the nation well, express the nation's will well, bring matters to the nation's attention well.

The discussion has a difficulty of its own. What is meant by "well"? Who is to judge? Is it to be some panel of philosophers, some fancied posterity, or some other outside authority? I answer, no philosophy, no posterity, no external authority, but the English nation here and now.

Free government is self-government — a government of the people by the people. The best government of this sort is that which the people think best. An imposed government, a government like that of the English in India, may very possibly be better; it may represent the views of a higher race than the governed race; but it is not therefore a free government. A free government is that which the people subject to it voluntarily choose. In a casual collection of loose people the only possible free government is a democratic government. Where no one knows, or cares for, or respects any one else, all must rank equal; no one's opinion can be more potent than that of another. But, as has been explained, a deferential nation has a structure of its own. Certain persons are by common consent agreed to be wiser than others, and their opinion is, by consent, to rank for much more than its numerical value. We may in these happy nations weigh votes as well as count them, though in less favored countries we can count only. But in free nations, the votes so weighed or so counted must decide. A perfect,

free government is one which decides perfectly according to those votes; an imperfect, one which so decides imperfectly; a bad, one which does not so decide at all. Public opinion is the test of this polity; the best opinion which, with its existing habits of deference, the nation will accept: if the free government goes by that opinion, it is a good government of its species; if it contravenes that opinion, it is a bad one.

Tried by this rule the House of Commons does its appointing business well. It chooses rulers as we wish rulers to be chosen. If it did not, in a speaking and writing age we should soon know. I have heard a great Liberal statesman say, "The time was coming when we must advertise for a grievance."* What a good grievance it would be were the ministry appointed and retained by the Parliament, a ministry detested by the nation. An anti-present government league would be instantly created, and it would be more instantly powerful and more instantly successful than the Anti-Corn Law League.

It has, indeed, been objected that the choosing business of Parliament is done ill, because it does not choose strong governments. And it is certain that when public opinion does not definitely decide upon a marked policy, and when in consequence parties in the Parliament are nearly even, individual cupidity and changeability may make Parliament change its appointees too often; may induce them never enough to trust any of them; may make it keep all of them under a suspended sentence of coming dismissal. But the experience of Lord Palmerston's second government proves, I think, that these fears are exaggerated. When the choice of a nation is really fixed on a statesman, Parliament will fix upon him too. The parties in the Parliament of 1859 were as nearly divided as in any probable Parliament; a great many Liberals did not much like Lord Palmerston, and they would have gladly co-operated in an attempt to dethrone him. But the same influence acted on Parliament within which acted on the nation without. The moderate men

* This was said in 1858.

of both parties were satisfied that Lord Palmerston's was the best government, and they therefore preserved it though it was hated by the immoderate on both sides. We have then found by a critical instance that a government supported by what I may call "the common element," by the like-minded men of unlike parties, will be retained in power, though parties are even, and though, as Treasury counting reckons, the majority is imperceptible. If happily, by its intelligence and attractiveness, a cabinet can gain a hold upon the great middle part of Parliament, it will continue to exist notwithstanding the hatching of small plots and the machinations of mean factions.

On the whole, I think it indisputable that the selecting task of Parliament is performed as well as public opinion wishes it to be performed; and if we want to improve that standard, we must first improve the English nation, which imposes that standard. Of the substantial part of its legislative task the same, too, may I think, be said. The manner of our legislation is indeed detestable, and the machinery for settling that manner odious. A committee of the whole House, dealing, or attempting to deal, with the elaborate clauses of a long bill, is a wretched specimen of severe but misplaced labor. It is sure to wedge some clause into the act, such as that which the judge said "seemed to have fallen by itself, PERHAPS, from heaven, into the mind of the legislature," so little had it to do with anything on either side or around it. At such times government by a public meeting displays its inherent defects, and is little restrained by its necessary checks. But the essence of our legislature may be separated from its accidents. Subject to two considerable defects I think Parliament passes laws as the nation wishes to have them passed.

Thirty years ago this was not so. The nation had outgrown its institutions, and was cramped by them. It was a man in the clothes of a boy; every limb wanted more room, and every garment to be fresh made. "D–mn me," said Lord Eldon in the dialect of his age, "if I had to

begin life again I would begin as an agitator." The shrewd old man saw that the best life was that of a miscellaneous objector to the old world, though he loved that world, believed in it, could imagine no other. But he would not say so now. There is no worse trade than agitation at this time. A man can hardly get an audience if he wishes to complain of anything. Now-a-days, not only does the mind and policy of Parliament (subject to the exceptions before named) possess the common sort of moderation essential to the possibility of parliamentary government, but also that exact gradation, that precise species of moderation, most agreeable to the nation at large. Not only does the nation endure a parliamentary government, which it would not do if Parliament were immoderate, but it likes parliamentary government. A sense of satisfaction permeates the country because most of the country feels it has got the precise thing that suits it.

The exceptions are two. First, that Parliament leans too much to the opinions of the landed interest. The Cattle Plague Act is a conspicuous instance of this defect. The details of that Bill may be good or bad, and its policy wise or foolish. But the manner in which it was hurried through the House savored of despotism. The cotton trade or the wine trade could not, in their maximum of peril, have obtained such aid in such a manner. The House of Commons would hear of no pause and would heed no arguments. The greatest number of them feared for their incomes. The land of England returns many members annually for the counties; these members the constitution gave them. But what is curious is that the landed interest gives no seats to other classes, but takes plenty of seats FROM other classes. Half the boroughs in England are represented by considerable landowners, and when rent is in question, as in the cattle case, they think more of themselves than of those who sent them. In number the landed gentry in the House far surpass any other class. They have, too, a more intimate connection with one another:

they were educated at the same schools; know one another's family name from boyhood; form a society; are the same kind of men; marry the same kind of women. The merchants and manufacturers in Parliament are a motley race — one educated here, another there, a third not educated at all; some are of the second generation of traders, who consider self-made men intruders upon an hereditary place; others are self-made, and regard the men of inherited wealth, which they did not make and do not augment, as beings of neither mind nor place, inferior to themselves because they have no brains, and inferior to lords because they have no rank. Traders have no bond of union, no habits of intercourse; their wives, if they care for society, want to see not the wives of other such men, but "better people," as they say — the wives of men certainly with land, and, if heaven help, with the titles. Men who study the structure of Parliament, not in abstract books, but in the concrete London world, wonder not that the landed interest is very powerful, but that it is not despotic. I believe it would be despotic if it were clever, or rather if its representatives were so, but it has a fixed device to make them stupid. The counties not only elect landowners, which is natural, and perhaps wise, but also elect only landowners OF THEIR OWN COUNTY, which is absurd. There is no free trade in the agricultural mind; each county prohibits the import of able men from other counties. This is why eloquent sceptics — Bolingbroke and Disraeli — have been so apt to lead the unsceptical Tories. They WILL have people with a great piece of land in a particular spot, and of course these people generally cannot speak, and often cannot think. And so eloquent men who laugh at the party come to lead the party. The landed interest has much more influence than it should have; but it wastes that influence so much that the excess is, except on singular occurrences (like the cattle plague), of secondary moment.

It is almost another side of the same matter to say that the structure of Parliament gives too little weight to the

growing districts of the country and too much to the stationary. In old times the South of England was not only the pleasantest but the greatest part of England. Devonshire was a great maritime county when the foundations of our representations were fixed; Somersetshire and Wiltshire great manufacturing counties. The harsher climate of the northern counties was associated with a ruder, a stearner, and a sparser people. The immense preponderance which our Parliament gave before 1832, and, though pruned and mitigated, still gives to England south of the Trent, then corresponded to a real preponderance in wealth and mind. How opposite the present contrast is we all know. And the case gets worse every day. The nature of modern trade is to give to those who have much and take from those who have little. Manufacture goes where manufacture is, because there, and there alone, it finds attendant and auxiliary manufacture. Every railway takes trade from the little town to the big town, because it enables the customer to buy in the big town. Year by year the North (as we may roughly call the new industrial world) gets more important, and the South (as we may call the pleasant remnant of old times) gets less important. It is a grave objection to our existing parliamentary constitution that it gives much power to regions of past greatness, and refuses equal power to regions of present greatness.

I think (though it is not a popular notion) that by far the greater part of the cry for parliamentary reform is due to this inequality. The great capitalists, Mr. Bright and his friends, believe they are sincere in asking for more power for the working man, but, in fact, they very naturally and very properly want more power for themselves. They cannot endure — they ought not to endure — that a rich, able manufacturer should be a less man than a small, stupid squire. The notions of political equality which Mr. Bright puts forward are as old as political speculation, and have been refuted by the first efforts of that speculation. But for all that they are likely to last as long as political society, because

they are based upon indelible principles in human nature. Edmund Burke called the first East Indians "Jacobins to a man," because they did not feel their "present importance equal to their real wealth." So long as there is an uneasy class, a class which has not its just power, it will rashly clutch and blindly believe the notion that all men should have the same power.

I do not consider the exclusion of the working classes from effectual representation a defect in THIS aspect of our parliamentary representation. The working classes contribute almost nothing to our corporate public opinion, and therefore the fact of their want of influence in Parliament does not impair the coincidence of Parliament with public opinion. They are left out in the representation, and also in the thing represented.

Nor do I think the number of persons of aristocratic descent in Parliament impairs the accordance of Parliament with public opinion. No doubt the direct descendants and collateral relatives of noble families supply members to Parliament in far greater proportion than is warranted by the number of such families in comparison with the whole nation. But I do not believe that these families have the least corporate character, or any common opinions, different from others of the landed gentry. They have the opinions of the propertied rank in which they were born. The English aristocracy have never been a caste apart, and are not a caste apart now. They would keep up nothing that other landed gentlemen would not. And if any landed gentlemen are to be sent to the House of Commons, it is desirable that many should be men of some rank. As long as we keep up a double set of institutions,—one dignified and intended to impress the many, the other efficient and intended to govern the many,—we should take care that the two match nicely, and hide where the one begins and where the other ends. This is in part effected by conceding some subordinate power to the august part of our polity, but it is equally aided by keeping an aristocratic element in the useful part of our polity. In truth, the deferential instinct

secures both. Aristocracy is a power in the "constituencies." A man who is an honorable or a baronet, or better yet, perhaps, a real earl, though Irish, is coveted by half the electing bodies; and, *cæteris paribus*, a manufacturer's son has no chance with him. The reality of the deferential feeling in the community is tested by the actual election of the class deferred to, where there is a large free choice betwixt it and others.

Subject, therefore, to the two minor, but still not inconsiderable, defects I have named, Parliament conforms itself accurately enough, both as a chooser of executives and as a legislature, to the formed opinion of the country. Similarly, and subject to the same exceptions, it expresses the nation's opinion in words well, when it happens that words, not laws are wanted. On foreign matters, where we cannot legislate, whatever the English nation thinks, or thinks it thinks, as to the critical events of the world, whether in Denmark, in Italy, or America, and no matter whether it thinks wisely or unwisely, that same something, wise or unwise, will be thoroughly well said in Parliament. The lyrical function of Parliament, if I may use such a phrase, is well done; it pours out in characteristic words the characteristic heart of the nation. And it can do little more useful. Now that free government is in Europe so rare and in America so distant, the opinion, even the incomplete, erroneous, rapid opinion of the free English people, is invaluable. It may be very wrong, but it is sure to be unique; and if it is right it is sure to contain matter of great magnitude, for it is only a first-class matter in distant things which a free people ever sees or learns. The English people must miss a thousand minutiæ that continental bureaucracies know even to well; but if they see a cardinal truth which those bureaucracies miss, that cardinal truth may greatly help the world.

But if in these ways, and subject to these exceptions, Parliament by its policy and its speech well embodies and expresses public opinion, I own I think it must be conceded that it is not equally successful in elevating public

opinion. The teaching task of Parliament is the task it does worst. Probably at this moment it is natural to exaggerate this defect. The greatest teacher of all in Parliament, the head-master of the nation, the great elevator of the country — so far as Parliament elevates it — must be the Prime Minister; he has an influence, an authority, a facility in giving a great tone to discussion, or a mean tone, which no other man has. Now Lord Palmerston for many years steadily applied his mind to giving, not indeed a mean tone, but a light tone, to the proceedings of Parliament. One of his greatest admirers has since his death told a story of which he scarcely sees, or seems to see, the full effect. When Lord Palmerston was first made leader of the House, his jaunty manner was not at all popular, and some predicted failure. "No," said an old member, "he will soon educate us DOWN to his level; the House will soon prefer this Ha! Ha! style to the wit of Canning and the gravity of Peel." I am afraid that we must own that the prophecy was accomplished. No prime minister, so popular and so influential, has ever left in the public memory so little noble teaching. Twenty years hence, when men inquire as to the then fading memory of Palmerston, we shall be able to point to no great truth which he taught, no great distinct policy which he embodied, no noble words which once fascinated his age, and which, in after years, men would not willingly let die. But we shall be able to say "he had a genial manner, a firm, sound sense; he had a kind of cant of insincerity, but we always knew what he meant; he had the brain of a ruler in the clothes of a man of fashion." Posterity will hardly understand the words of the aged reminiscent, but we now feel their effect. The House of Commons, since it caught its tone from such a statesman, has taught the nation worse, and elevated it less, than usual.

I think, however, that a correct observer would decide that in general, and on principle, the House of Commons does not teach the public as much as it might teach it, or as the public would wish to learn. I do not wish very

abstract, very philosophical, very hard matters to be stated in Parliament. The teaching there given must be popular, and to be popular it must be concrete, embodied, short. The problem is to know the highest truth which the people will bear, and to inculcate and preach that. Certainly Lord Palmerston did not preach it. He a little degraded us by preaching a doctrine just below our own standard; a doctrine not enough below us to repel us much, but yet enough below to harm us by augmenting a worldliness which needed no addition, and by diminishing a love of principle and philosophy which did not want deduction.

In comparison with the debates of any other assembly, it is true the debates by the English Parliament are most instructive. The debates in the American Congress have little teaching efficacy; it is the characteristic vice of Presidential Government to deprive them of that efficacy; in that government a debate in the Legislature has little effect, for it can not turn out the executive, and the executive can veto all it decides. The French Chambers* are suitable appendages to an Empire which desires the power of despotism without its shame; they prevent the enemies of the Empire being quite correct when they say there is no free speech: a few permitted objectors fill the air with eloquence, which every one knows to be often true, and always vain. The debates in an English Parliament fill a space in the world which, in these auxiliary chambers, is not possible. But I think any one who compares the discussions on great questions in the higher part of the press, with the discussions in Parliament, will feel that there is (of course amid much exaggeration and vagueness) a greater vigor and a higher meaning in the writing than in the speech; a vigor which the public appreciate — a meaning that they like to hear.

The "Saturday Review" said, some years since, that the ability of Parliament was a "protected ability"; that there was at the door a differential duty of at least £2,000 a year. Accordingly the House of Commons,

* This of course relates to the assemblies of the Empire.

representing only mind coupled with property, is not equal in mind to a legislature chosen for mind only, and whether accompanied by wealth or not. But I do not for a moment wish to see a representation of pure mind; it would be contrary to the main thesis of this essay. I maintain that Parliament ought to embody the public opinion of the English nation; and, certainly, that opinion is much more fixed by its property than by its mind. The "too clever by half" people who live in "Bohemia," ought to have no more influence in Parliament than they have in England, and they can scarcely have less. Only, after every great abatement and deduction, I think the country would bear a little more mind; and that there is a profusion of opulent dullness in Parliament which might a little — though only a little — be pruned away.

The only function of Parliament which remains to be considered is the informing function, as I just now called it: the function which belongs to it, or to members of it, to bring before the nation the ideas, grievances, and wishes of special classes. This must not be confounded with what I have called its teaching function. In life, no doubt, the two run one into another. But so do many things which it is very important in definition to separate. The fact of two things being often found together is rather a reason for, than an objection to, separating them in idea. Sometimes they are NOT found together, and then we may be puzzled if we have not trained ourselves to separate them. The teaching function brings true ideas before the nation, and is the function of its highest minds. The expressive function brings only special ideas, and is the function of but special minds. Each class has its ideas, wants, and notions; and certain brains are ingrained with them. Such sectarian conceptions are not those by which a determining nation should regulate its action, nor are orators, mainly animated by such conceptions, safe guides in policy. But those orators should be heard; those conceptions should be kept in sight. The great maxim of modern thought is not only the toleration of everything, but the examination of

everything. It is by examining very bare, very dull, very unpromising things, that modern science has come to be what it is. There is a story of a great chemist who said he owed half his fame to his habit of examining, after his experiments, what was going to be thrown away, everybody knew the result of the experiment itself, but in the refuse matter there were many little facts and unknown changes, which suggested the discoveries of a famous life to a person capable of looking for them. So with the special notions of neglected classes. They may contain elements of truth which though small, are the very elements which we now require, because we already know all the rest.

This doctrine was well known to our ancestors. They labored to give a CHARACTER to the various constituencies, or to many of them. They wished that the shipping trade, the wool trade, the linen trade, should each have their spokesman: that the unsectional Parliament should know what each section in the nation thought before it gave the national decision. This is the true reason for admitting the working classes to a share in the representation, at least as far as the composition of Parliament is to be improved by that admission. A great many ideas, a great many feelings have gathered among the town artisans — a peculiar intellectual life has sprung up among them. They believe that they have interests which are misconceived or neglected; that they know something which others do not know; that the thoughts of Parliament are not as their thoughts. They ought to be allowed to try to convince Parliament; their notions ought to be stated as those of other classes are stated; their advocates should be heard as other people's advocates are heard. Before the Reform Bill, there was a recognized machinery for that purpose. The member for Westminster, and other members, were elected by universal suffrage (or what was in substance such); those members did, in their day, state what were the grievances and ideas — or were thought to be the grievances and ideas — of the working classes. It was the single unbending franchise intro-

duced in 1832 that has caused this difficulty, as it has others.

Until such a change is made the House of Commons will be defective, just as the House of Lords was defective. It will not LOOK right. As long as the Lords do not come to their own House, we may prove on paper that it is a good revising chamber, but it will be difficult to make the literary argument felt. Just so, as long as a great class, congregated in political localities, and known to have political thoughts and wishes, is without notorious and palpable advocates in Parliament, we may prove on paper that our representation is adequate but the world will not believe it. There is a saying of the eighteenth century, that in politics "gross appearances are great realities." It is in vain to demonstrate that the working classes have no grievances; that the middle classes have done all that is possible for them, and so on with a crowd of arguments which I need not repeat, for the newspapers keep them in type, and we can say them by heart. But so long as the "gross appearance" is that there are no evident, incessant representatives to speak the wants of artisans, the "great reality" will be a diffused dissatisfaction. Thirty years ago it was vain to prove that Gatton and Old Sarum were valuable seats, and sent good members. Everybody said, "Why, there are no people there." Just so everybody must say now, "Our representative system must be imperfect, for an immense class has no members to speak for it." The only answer to the cry against constituencies WITHOUT inhabitants was to transfer their power to constituencies WITH inhabitants. Just so, the way to stop the complaint that artisans have no members is to give them members,—to create a body of representatives, chosen by artisans, believing, as Mr. Carlyle would say, "that artisanism is the one thing needful."

VI.

ON CHANGES OF MINISTRY.

THERE is one error as to the English Constitution which crops up periodically. Circumstances which often, though irregularly, occur naturally suggest that error, and as surely as they happen it revives. The relation of Parliament, and especially of the House of Commons, to the Executive Government is the specific peculiarity of our Constitution, and an event which frequently happens much puzzles some people as to it.

That event is a change of ministry. All our administrators go out together. The whole executive government changes — at least, all the heads of it change in a body, and at every such change some speculators are sure to exclaim that such a habit is foolish. They say, "No doubt Mr. Gladstone and Lord Russell may have been wrong about reform; no doubt Mr. Gladstone may have been cross in the House of Commons; but why should either or both of these events change all the heads of all our practical departments? What could be more absurd than what happened in 1858? Lord Palmerston was for once in his life over-buoyant; he gave rude answers to stupid inquiries; he brought into the cabinet a nobleman concerned in an ugly trial about a woman; he, or his foreign secretary, did not answer a French dispatch by a dispatch, but told our ambassador to reply orally. And because of these trifles, or at any rate, these isolated UN-administrative mistakes, all our administration had fresh heads. The Poor Law Board had a new chief, the Home Department a new chief, the Public Works a new chief. Surely this was absurd." Now, is this objection good or bad? Speaking generally, is it wise so to change all our rulers?

The practice produces three great evils. First, it brings in on a sudden new persons and untried persons to preside over our policy. A little while ago Lord Cranborne* had no more idea that he would now be Indian Secretary than that he would be a bill broker. He had never given any attention to Indian affairs; he can get them up, because he is an able educated man who can get up anything. But they are not "part and parcel" of his mind; not his subjects of familiar reflection, nor things of which he thinks by predilection, of which he cannot help thinking. But because Lord Russell and Mr. Gladstone did not please the House of Commons about reform, there he is. A perfectly inexperienced man, so far as Indian affairs go, rules all our Indian empire. And if all our heads of offices change together, so very frequently it must be. If twenty offices are vacant at once, there are almost never twenty tried, competent, clever men ready to take them. The difficulty of making up a government is very much like the difficulty of putting together a Chinese puzzle: the spaces do not suit what you have to put into them. And the difficulty of matching a ministry is more than that of fitting a puzzle, because the ministers to be put in can object, though the bits of a puzzle cannot. One objector can throw out the combination. In 1847 Lord Grey would not join Lord John Russell's projected government if Lord Palmerston was to be foreign secretary; Lord Palmerston WOULD be foreign secretary, and so the government was not formed. The cases in which a single refusal prevents a government are rare, and there must be many concurrent circumstances to make it effectual. But the cases in which refusals impair or spoil a government are very common. It almost never happens that the ministry-maker can put into his offices exactly whom he would like; a number of placemen are always too proud, too eager, or too obstinate to go just where they should.

Again this system not only makes new ministers ignorant, but keeps present ministers indifferent. A

*Now Lord Salisbury, who, when this was written was Indian Secretary.—NOTE to second edition.

man cannot feel the same interest that he might in his work if he knows that by events over which he has no control, — by errors in which he had no share, — by metamorphoses of opinion which belong to a different sequence of phenomena, he may have to leave that work in the middle, and may very likely never return to it. The new man put into a fresh office ought to have the best motive to learn his task thoroughly, but, in fact, in England, he has not at all the best motive. The last wave of party and politics brought him there, the next may take him away. Young and eager men take, even at this disadvantage, a keen interest in office work, but most men, especially old men hardly do so. Many a battered minister may be seen to think much more of the vicissitudes which make him and unmake him, than of any office matter.

Lastly, a sudden change of ministers may easily cause a mischievous change of policy. In many matters of business, perhaps in most, a continuity of mediocrity is better than a hotch-potch of excellences. For example, now that progress in the scientific arts is revolutionizing the instruments of war, rapid changes in our head-preparers for land and sea war are most costly and most hurtful. A single competent selector of new inventions would probably in the course of years, after some experience, arrive at something tolerable; it is in the nature of steady, regular, experimenting ability to diminish, if not vanquish, such difficulties. But a quick succession of chiefs has no similar facility. They do not learn from each others' experience; you might as well expect the new head boy at a public school to learn from the experience of the last head boy. The most valuable result of many years is a nicely-balanced mind instinctively heedful of various errors; but such a mind is the incommunicable gift of individual experience, and an outgoing minister can no more leave it to his successor than an elder brother can pass it on to a younger. Thus a desultory and incalculable policy may follow from a rapid change of ministers.

These are formidable arguments, but four things may, I think, be said in reply to, or mitigation of them. A little examination will show that this change of ministers is essential to a Parliamentary government; that something like it will happen in all elective governments, and that worse happens under Presidential government; that it is not necessarily prejudicial to a good administration, but that, on the contrary, something like it is a prerequisite of good administration; that the evident evils of English administration are not the results of Parliamentary government, but of grave deficiencies in other parts of our political and social state; that, in a word, they result not from what we have, but from what we have NOT.

As to the first point, those who wish to remove the choice of ministers from Parliament have not adequately considered what a Parliament is. A Parliament is nothing less than a big meeting of more or less idle people. In proportion as you give it power it will inquire into everything, settle everything, meddle in everything. In an ordinary despotism, the powers of a despot are limited by his bodily capacity, and by the calls of pleasure; he is but one man; there are but twelve hours in his day, and he is not disposed to employ more than a small part in dull business; he keeps the rest for the court, or the harem, or for society. He is at the top of the world, and all the pleasures of the world are set before him. Mostly there is only a very small part of political business which he cares to understand, and much of it (with the shrewd sensual sense belonging to the race) he knows that he will never understand. But a Parliament is composed of a great number of men by no means at the top of the world. When you establish a predominant Parliament, you give over the rule of the country to a despot who has unlimited time, who has unlimited vanity, who has, or believes he has, unlimited comprehension, whose pleasure is in action, whose life is work. There is no limit to the curiosity of Parliament. Sir Robert Peel once suggested that a list should be taken down of the questions asked of him in a single evening; they

touched more or less on fifty subjects, and there were a thousand other subjects which by parity of reason might have been added too. As soon as bore A ends, bore B begins. Some inquire from genuine love of knowledge, or from a real wish to improve what they ask about, others to see their name in the papers, others to show a watchful constituency that they are alert, others to get on and to get a place in the government, others from an accumulation of little motives they could not themselves analyze, or because it is their habit to ask things. And a proper reply must be given. It was said that "Darby Griffith destroyed Lord Palmerston's first Government," and undoubtedly the cheerful impertinence with which in the conceit of victory that minister answered grave men, much hurt his Parliamentary power. There is one thing which no one will permit to be treated lightly, himself. And so there is one too, which a sovereign assembly will never permit to be lessened or ridiculed, its own power. The minister of the day will have to give an account in Parliament of all branches of administration, to say why they act when they do, and why they do not when they don't.

Nor is chance inquiry all a public department has to fear. Fifty members of Parliament may be zealous for a particular policy affecting the department, and fifty others for another policy, and between them they may divide its action, spoil its favorite aims, and prevent its consistently working out either of their own aims. The process is very simple. Every department at times looks as if it was in a scrape; some apparent blunder, perhaps some real blunder, catches the public eye. At once the antagonist Parliamentary sections, which want to act on the department, seize the opportunity. They make speeches, they move for documents, they amass statistics. They declare "that in no other country is such a policy possible as that which the department is pursuing; that it is mediæval; that it costs money; that it wastes life; that America does the contrary; that Prussia does the contrary." The newspapers follow according to their

nature. These bits of administrative scandal amuse the public. Articles on them are very easy to write, easy to read, easy to talk about. They please the vanity of mankind. We think as we read, "Thank God, I am not as that man; I did not send green coffee to the Crimea; I did not send patent cartridge to the common guns, and common cartridge to the breech-loaders. I make money; that miserable public functionary only wastes money." As for the defense of the department, no one cares for it or reads it. Naturally at first hearing it does not sound true. The opposition have the unrestricted selection of the point of attack, and they seldom choose a case in which the department, upon the surface of the matter, seems to be right. The case of first impression will always be that something shameful has happened; that such and such men did die; that this and that gun would not go off; that this or that ship will not sail. All the pretty reading is unfavorable, and all the praise is very dull.

Nothing is more helpless than such a department in Parliament if it has no authorized official defender. The wasps of the House fasten on it; here they perceive is something easy to sting, and safe, for it cannot sting in return. The small grain of foundation for complaint germinates, till it becomes a whole crop. At once the minister of the day is appealed to; he is at the head of the administration, and he must put the errors right, if such they are. The opposition leader says, "I put it to the right honorable gentleman, the First Lord of the Treasury. He is a man of business. I do not agree with him in his choice of ends, but he is an almost perfect master of methods and means. What he wishes to do he does do. Now I appeal to him whether such gratuitous errors, such fatuous incapacity, are to be permitted in the public service. Perhaps the right honorable gentleman will grant me his attention while I show from the very documents of the department," etc., etc. What is the minister to do? He never heard of this matter; he does not care about the matter. Several of the supporters of

the Government are interested in the opposition to the department; a grave man, supposed to be wise, mutters, "This is too bad." The Secretary of the Treasury tells him, "The House is uneasy. A good many men are shaky. A. B. said yesterday he had been dragged through the dirt four nights following. Indeed I am disposed to think myself that the department has been somewhat lax. Perhaps an inquiry," etc., etc. And upon that the Prime Minister rises and says, "That Her Majesty's Government having given very serious and grave consideration to this most important subject, are not prepared to say that in so complicated a matter the department has been perfectly exempt from error. He does not indeed concur in all the statements which have been made; it is obvious that several of the charges advanced are inconsistent with one another. If A. had really died from eating green coffee on the Tuesday, it is plain he could not have suffered from insufficient medical attendance on the following Thursday. However, on so complex a subject, and one so foreign to common experience, he will not give a judgment. And if the honorable member would be satisfied with having the matter inquired into by a committee of that House, he will be prepared to accede to the suggestion."

Possibly the outlying department, distrusting the ministry, crams a friend. But it is happy indeed if it chances on a judicious friend. The persons most ready to take up that sort of business are benevolent amateurs, very well intentioned, very grave, very respectable, but also rather dull. Their words are good, but about the joints their arguments are weak. They speak very well, but while they are speaking, the decorum is so great that everybody goes away. Such a man is no match for a couple of House of Commons gladiators. They pull what he says to shreds. They show or say that he is wrong about his facts. Then he arises in a fuss and must explain: but in his hurry he mistakes, and cannot find the right paper, and becomes first hot, then confused, next inaudible, and so sits down. Probably he leaves the House with the

notion that the defense of the department has broken down, and so the "Times" announces to all the world as soon as it awakes.

Some thinkers have naturally suggested that the heads of departments should as such, have the right of speech in the House. But the system when it has been tried has not answered. M. Guizot tells us from his own experience that such a system is not effectual. A great popular assembly has a corporate character; it has its own privileges, prejudices, and notions. And one of these notions is that its own members — the persons it sees every day — whose qualities it knows, whose minds it can test, are those whom it can most trust. A clerk speaking from without would be an unfamiliar object. He would be an outsider. He would speak under suspicion; he would speak without dignity. Very often he would speak as a victim. All the bores of the House would be upon him. He would be put upon examination. He would have to answer interrogatories. He would be put through the figures and cross-questioned in detail. The whole effect of what he said would be lost in *quæstiunculæ* and hidden in a controversial detritus.

Again, such a person would rarely speak with great ability. He would speak as a scribe. His habits must have been formed in the quiet of an office; he is used to red tape, placidity, and the respect of subordinates. Such a person will hardly ever be able to stand the hurly-burly of a public assembly. He will lose his head — he will say what he should not. He will get hot and red; he will feel he is a sort of culprit. After being used to the flattering deference of deferential subordinates, he will be pestered by fuss and confounded by invective. He will hate the House as naturally as the House does not like him. He will be an incompetent speaker addressing a hostile audience.

And what is more, an outside administrator addressing Parliament, can move Parliament only by the goodness of his arguments. He has no votes to back them up with. He is sure to be at chronic war with some active

minority of assailants or others. The natural mode in which a department is improved on great points and new points is by external suggestion; the worst foes of a department are the plausible errors which the most visible facts suggest, and which only half visible facts confute. Both the good ideas and the bad ideas are sure to find advocates first in the press and then in Parliament. Against these a permanent clerk would have to contend by argument alone. The minister, the head of the parliamentary government will not care for him. The minister will say in some undress soliloquy, "These permanent 'fellows' must look after themselves. I cannot be bothered. I have only a majority of nine, and a very shaky majority, too. I cannot afford to make enemies for those whom I did not appoint. They did nothing for me, and I can do nothing for them." And if the permanent clerk come to ask his help he will say in decorous language, "I am sure that if the department can evince to the satisfaction of Parliament that its past management has been such as the public interests require, no one will be more gratified than myself. I am not aware if it will be in my power to attend in my place on Monday; but if I can be so fortunate, I shall listen to your official statement with my very best attention." And so the permanent public servant will be teased by the wits, oppressed by the bores, and massacred by the innovators of Parliament.

The incessant tyranny of Parliament over the public offices is prevented and can only be prevented by the appointment of a parliamentary head, connected by close ties with the present ministry and the ruling party in Parliament. The parliamentary head is a protecting machine. He and the friends he brings stand between the department and the busybodies and crotchet-makers of the House and the country. So long as at any moment the policy of an office could be altered by chance votes in either House of Parliament, there is no security for any consistency. Our guns and our ships are not, perhaps, very good now. But they would be much worse

if any thirty or forty advocates for this gun or that gun could make a motion in Parliament, beat the department, and get their ships or their guns adopted. The "Black Breech Ordnance Company" and the "Adamantine Ship Company" would soon find representatives in Parliament, if forty or fifty members would get the national custom for their rubbish. But this result is now prevented by the parliamentary head of the department. As soon as the opposition begins the attack, he looks up his means of defense. He studies the subject, compiles his arguments, and builds little piles of statistics, which he hopes will have some effect. He has his reputation at stake, and he wishes to show that he is worth his present place, and fit for future promotion. He is well known, perhaps liked, by the House — at any rate the House attends to him; he is one of the regular speakers whom they hear and heed. He is sure to be able to get himself heard, and he is sure to make the best defense he can. And after he has settled his speech he loiters up to the Secretary of the Treasury, and says quietly, "They have got a motion against me on Tuesday, you know. I hope you will have your men here. A lot of fellows have crotchets, and though they do not agree a bit with one another, they are all against the department; they will all vote for the inquiry." And the Secretary answers, "Tuesday, you say; no (looking at a paper), I do not think it will come on Tuesday. There is Higgins on Education. He is good for a long time. But anyhow it shall be all right." And then he glides about and speaks a word here and a word there, in consequence of which, when the anti-official motion is made, a considerable array of steady, grave faces sits behind the Treasury Bench — nay, possibly a rising man who sits in outlying independence below the gangway rises to defend the transaction; the department wins by thirty-three, and the management of that business pursues its steady way.

This contrast is no fancy picture. The experiment of conducting the administration of a public department by an independent unsheltered authority has often been tried,

and always failed. Parliament always poked at it, till it made it impossible. The most remarkable is that of the Poor Law. The administration of that law is not now very good, but it is not too much to say that almost the whole of its goodness has been preserved by its having an official and party protector in the House of Commons. Without that contrivance we should have drifted back into the errors of the old Poor Law, and superadded to them the present meanness and incompetence in our large towns. All would have been given up to local management. Parliament would have interfered with the central board till it made it impotent, and the local authorities would have been despotic. The first administration of the new Poor Law was by "Commissioners"—the three kings of Somerset House, as they were called. The system was certainly not tried in untrustworthy hands. At the crisis Mr. Chadwick, one of the most active and best administrators in England, was the secretary and the motive power: the principal commissioner was Sir George Lewis, perhaps the best selective administrator of our time. But the House of Commons would not let the commission alone. For a long time it was defended because the Whigs had made the commission, and felt bound as a party to protect it. The new law started upon a certain intellectual impetus, and till that was spent its administration was supported in a rickety existence by an abnormal strength. But afterward the commissioners were left to their intrinsic weakness. There were members for all the localities, but there were none for them. There were members for every crotchet and corrupt interest, but there were none for them. The rural guardians would have liked to eke out wages by rates; the city guardians hated control, and hated to spend money. The commission had to be dissolved, and a parliamentary head was added; the result is not perfect, but it is an amazing improvement on what would have happened in the old system. The new system has not worked well because the central authority has too little power; but under the previous system

the central authority was getting to have, and by this time would have had, no power at all. And if Sir George Lewis and Mr. Chadwick could not maintain an outlying department in the face of Parliament, how unlikely that an inferior compound of discretion and activity will ever maintain it!

These reasonings show why a changing parliamentary head, a head changing as the ministry changes, is a necessity of good parliamentary government, and there is happily, a natural provision that there will be such heads. Party organization ensures it. In America, where on account of the fixedly recurring presidential election, and the perpetual minor elections, party organization is much more effectually organized than anywhere else, the effect on the offices is tremendous. Every office is filled anew at every presidential change, at least every change which brings in a new party. Not only the greatest posts, as in England, but the minor posts change their occupants. The scale of the financial operations of the Federal government is now so increased that most likely in that department, at least, there must in future remain a permanent element of great efficiency; a revenue of £90,000,000 sterling cannot be collected and expended with a trifling and changing staff. But till now the Americans have tried to get on not only with changing heads to a bureaucracy, as the English, but without any stable bureaucracy at all. They have facilities for trying it which no one else has. All Americans can administer, and the number of them really fit to be in succession lawyers, financiers, or military managers is wonderful; they need not be as afraid of a change of all their officials as European countries must, for the incoming substitutes are sure to be much better there than here; and they do not fear, as we English fear, that the outgoing officials will be left destitute in middle life, with no hope for the future and no recompense for the past, for in America (whatever may be the cause of it) opportunities are numberless, and a man who is ruined by being "off the rails" in England soon there gets on another line. The

Americans will probably to some extent modify their past system of total administrative cataclysms, but their very existence in the only competing form of free government should prepare us for and make us patient with the mild transitions of parliamentary government.

These arguments will, I think, seem conclusive to almost every one; but, at this moment, many people will meet them thus: they will say, "You prove what we do not deny, that this system of periodical change is a necessary ingredient in parliamentary government, but you have not proved what we do deny, that this change is a good thing. Parliamentary government may have that effect among others, for anything we care: we maintain merely that it is a defect." In answer, I think it may be shown not, indeed, that this precise change is necessary to a permanently perfect administration, but that some analogous change, some change of the same species, is so.

At this moment, in England, there is a sort of leaning toward bureaucracy — at least, among writers and talkers. There is a seizure of partiality to it. The English people do not easily change their rooted notions, but they have many unrooted notions. Any great European event is sure for a moment to excite a sort of twinge of conversion to something or other. Just now, the triumph of the Prussians — the bureaucratic people, as is believed, *par excellence* — has excited a kind of admiration for bureaucracy which a few years since we should have thought impossible. I do not presume to criticise the Prussian bureaucracy of my own knowledge; it certainly is not a pleasant institution for foreigners to come across, though agreeableness to travelers is but of very second-rate importance. But it is quite certain that the Prussian bureaucracy, though we, for a moment, half admire it at a distance, does not permanently please the most intelligent and liberal Prussians at home. What are two among the principal aims of the *Fortschritt Partei* — the party of progress — as Mr. Grant Duff, the most accurate and philosophical of our describers, delineates them?

First, "a liberal system, conscientiously carried out in all the details of the administration, with a view to avoiding the scandals now of frequent occurrence, when an obstinate or bigoted official sets at defiance the liberal initiations of the government, trusting to backstairs influence."

Second, "an easy method of bringing to justice guilty officials, who are at present, as in France, in all conflicts with simple citizens, like men armed *cap-à-pie* fighting with undefenseless." A system against which the most intelligent native liberals bring even with color of reason such grave objections, is a dangerous model for foreign imitation.

The defects of bureaucracy are, indeed, well known. It is a form of government which has been tried often enough in the world, and it is easy to show what, human nature being what it in the long run is, the defects of a bureaucracy must in the long run be.

It is an inevitable defect that bureaucrats will care more for routine than for results; or, as Burke put it, "that they will think the substance of business not to be much more important than the forms of it." Their whole education and all the habit of their lives make them do so. They are brought young into the particular part of the public service to which they are attached; they are occupied for years in learning its forms — afterward, for years too, in applying these forms to trifling matters. They are, to use the phrase of an old writer, "but the tailors of business; they cut the clothes, but they do not find the body." Men so trained must come to think the routine of business not a means, but an end — to imagine the elaborate machinery of which they form a part, and from which they derive their dignity, to be a grand and achieved result, not a working and changeable instrument. But in a miscellaneous world, there is now one evil and now another. The very means which best helped you yesterday, may very likely be those which most impede you to-morrow — you may want to do a different thing to-morrow, and all your accumulation of means for yes-

terday's work is but an obstacle to the new work. The Prussian military system is the theme of popular wonder now, yet it sixty years pointed the moral against form. We have all heard the saying that "Frederic the Great lost the battle of Jena." It was the system which he had established — a good system for his wants and his times, which, blindly adhered to, and continued into a different age — put to strive with new competitors — brought his country to ruin. The "dead and formal" Prussian system was then contrasted to the "living" French system — the sudden outcome of the new explosive democracy. The system which now exists is the product of the reaction; and the history of its predecessor is a warning what its future history may be too. It is not more celebrated for its day than Frederic's for his, and principle teaches that a bureaucracy, elated by sudden success and marveling at its own merit, is the most unimproving and shallow of governments.

Not only does a bureaucracy thus tend to under-government, in point of quality; it tends to over-government, in point of quantity. The trained official hates the rude, untrained public. He thinks that they are stupid, ignorant, reckless — that they cannot tell their own interest — that they should have the leave of the office before they do anything. Protection is the natural inborn creed of every official body; free trade is an extrinsic idea, alien to its notions, and hardly to be assimilated with life; and it is easy to see how an accomplished critic, used to a free and active life, could thus describe the official.

"Every imaginable and real social interest" says Mr. Laing, "religion, education, law, police, every branch of public or private business, personal liberty to move from place to place, even from parish to parish within the same jurisdiction; liberty to engage in any branch of trade or industry on a small or large scale, all the objects, in short, in which body, mind and capital can be employed in civilized society, were gradually laid hold of for the employment and support of functionaries, were centralized in *bureaux*, were superintended, licensed, inspected,

reported upon and interfered with by a host of officials scattered over the land, and maintained at the public expense, yet with no conceivable utility in their duties. They are not, however, gentlemen at large, enjoying salary without service. They are under a semi-military discipline. In Bavaria, for instance, the superior civil functionary can place his inferior functionary under house-arrest, for neglect of duty, or other offense against civil functionary discipline. In Wurtemberg, the functionary cannot marry without leave from his superior. Voltaire says, somewhere, that, 'the art of government is to make two-thirds of a nation pay all it possibly can pay for the benefit of the other third.' This is realized in Germany by the functionary system. The functionaries are not there for the benefit of the people, but the people for the benefit of the functionaries. All this machinery of functionarism, with its numerous ranks and gradations in every district, filled with a staff of clerks and expectants in every department looking for employment, appointments, or promotions, was intended to be a new support of the throne in the new social state of the Continent; a third class, in connection with the people by their various official duties of interference in all public or private affairs, yet attached by their interests to the kingly power. The *Beamptenstand*, or functionary class, was to be the equivalent to the class of nobility, gentry, capitalists, and men of larger landed property than the peasant-proprietors, and was to make up in numbers for the want of individual weight and influence. In France, at the expulsion of Louis Philippe, the civil functionaries were stated to amount to 807,030 individuals. This civil army was more than double of the military. In Germany, this class is necessarily more numerous in proportion to the population, the landwehr system imposing many more restrictions than the conscription on the free action of the people, and requiring more officials to manage it, and the semi-feudal jurisdictions and forms of law requiring much more writing and intricate forms of procedure before the courts than the Code Napoleon."

A bureaucracy is sure to think that its duty is to augment official power, official business, or official members, rather than to leave free the energies of mankind; it overdoes the quantity of government, as well as impairs its quality.

The truth is, that a skilled bureaucracy — a bureaucracy trained from early life to its special avocation — is, though it boasts of an appearance of science, quite inconsistent with the true principles of the art of business. That art has not yet been condensed into precepts, but a great many experiments have been made, and a vast floating vapor of knowledge floats through society. One of the most sure principles is, that success depends on a due mixture of special and nonspecial minds — of minds which attend to the means, and of minds which attend to the end. The success of the great joint-stock banks of London — the most remarkable achievement of recent business — has been an example of the use of this mixture. These banks are managed by a board of persons mostly NOT trained to the business, supplemented by, and annexed to, a body of specially trained officers, who have been bred to banking all their lives. These mixed banks have quite beaten the old banks, composed exclusively of pure bankers; it is found that the board of directors has greater and more flexible knowledge — more insight into the wants of a commercial community — knows when to lend and when not to lend, better than the old bankers, who had never looked at life, except out of the bank windows. Just so the most successful railways in Europe have been conducted — not by engineers or traffic managers — but by capitalists; by men of a certain business culture, if of no other. These capitalists buy and use the services of skilled managers, as the unlearned attorney buys and uses the services of the skilled barrister, and manage far better than any of the different sorts of special men under them. They combine these different specialties — make it clear where the realm of one ends and that of the other begins, and add to it a wide knowledge of large affairs, which no special man can have, and

which is only gained by diversified action. But this utility of leading minds used to generalize, and acting upon various materials, is entirely dependent upon their position. They must not be at the bottom — they must not even be half way up — they must be at the top. A merchant's clerk would be a child at a bank counter; but the merchant himself could, very likely, give good, clear, and useful advice in a bank court. The merchant's clerk would be equally at sea in a railway office, but the merchant himself could give good advice, very likely, at a board of directors. The summits (if I may so say) of the various kinds of business are, like the tops of mountains, much more alike than the parts below — the bare principles are much the same; it is only the rich variegated details of the lower strata that so contrast with one another. But it needs traveling to know that the summits ARE the same. Those who live on one mountain believe that THEIR mountain is wholly unlike all others.

The application of this principle to parliamentary government is very plain; it shows at once that the intrusion from without upon an office of an exterior head of the office, is not an evil, but that, on the contrary, it is essential to the perfection of that office. If it is left to itself, the office will become technical, self-absorbed, self-multiplying. It will be likely to overlook the end in the means; it will fail from narrowness of mind; it will be eager in seeming to do; it will be idle in real doing. An extrinsic chief is the fit corrector of such errors. He can say to the permanent chief, skilled in the forms and pompous with the memories of his office, "Will you, Sir, explain to me how this regulation conduces to the end in view? According to the natural view of things, the applicant should state the whole of his wishes to one clerk on one paper; you make him say it to five clerks on five papers." Or, again, "Does it not appear to you, Sir, that the reason of this formality is extinct? When we were building wood ships, it was quite right to have such precautions against fire; but now that we are

building iron ships," etc., etc. If a junior clerk asked these questions, he would be "pooh-poohed!" It is only the head of an office that can get them answered. It is he, and he only, that brings the rubbish of office to the burning-glass of sense.

The immense importance of such a fresh mind is greatest in a country where business changes most. A dead, inactive, agricultural country may be governed by an unalterable bureau for years and years, and no harm come of it. If a wise man arranged the bureau rightly in the beginning, it may run rightly a long time. But, if the country be a progressive, eager, changing one, soon the bureau will either cramp improvement, or be destroyed itself.

This conception of the use of a parliamentary head shows how wrong is the obvious notion which regards him as the principal administrator of his office. The late Sir George Lewis used to be fond of explaining this subject. He had every means of knowing. He was bred in the permanent civil service. He was a very successful Chancellor of the Exchequer, a very successful Home Secretary, and he died Minister for War. He used to say, "It is not the business of a cabinet minister to work his department. His business is to see that it is properly worked. If he does much, he is probably doing harm. The permanent staff of the office can do what he chooses to do much better, or if they cannot, they ought to be removed. He is only a bird of passage, and cannot compete with those who are in the office all their lives round." Sir George Lewis was a perfect parliamentary head of an office, so far as that head is to be a keen critic and rational corrector of it.

But Sir George Lewis was not perfect: he was not even an average good head in another respect. The use of a fresh mind applied to the official mind is not only a corrective use, it is also an animating use. A public department is very apt to be dead to what is wanting for a great occasion till the occasion is past. The vague public mind will appreciate some signal duty

before the precise, occupied administration perceives it. The Duke of Newcastle was of this use at least in the Crimean war. He roused up his department, though when roused it could not act. A perfect parliamentary minister would be one who should add the animating capacity of the Duke of Newcastle to the accumulated sense, the detective instinct, and the *laissez faire* habit of Sir George Lewis.

As soon as we take the true view of Parliamentary office we shall perceive that, fairly, frequent change in the official is an advantage, not a mistake. If his function is to bring a representative of outside sense and outside animation in contact with the inside world, he ought often to be changed. No man is a perfect representative of outside sense. "There is some one," says the true French saying, "who is more able than Talleyrand, more able than Napoleon. *C'est tout le monde.*" That many-sided sense finds no microcosm in any single individual. Still less are the critical function and the animating function of a parliamentary minister likely to be perfectly exercised by one and the same man. Impelling power and restraining wisdom are as opposite as any two things, and are rarely found together. And even if the natural mind of the parliamentary minister was perfect, long contact with the office would destroy his use. Inevitably he would accept the ways of office, think its thoughts, live its life. The "dyer's hand would be subdued to what it works in." If the function of a parliamentary minister is to be an outsider to his office, we must not choose one who, by habit, thought, and life, is acclimatized to its ways.

There is every reason to expect that a parliamentary statesman will be a man of quite sufficient intelligence, quite enough various knowledge, quite enough miscellaneous experience, to represent effectually general sense in opposition to bureaucratic sense. Most cabinet ministers in charge of considerable departments are men of superior ability; I have heard an eminent living statesman of long experience say that in his time he only knew one

instance to the contrary. And there is the best protection that it shall be so. A considerable cabinet minister has to defend his department in the face of mankind; and though distant observers and sharp writers may depreciate it, this is a very difficult thing. A fool, who has publicly to explain great affairs, who has publicly to answer detective questions, who has publicly to argue against able and quick opponents, must soon be shown to be a fool. The very nature of parliamentary government answers for the discovery of substantial incompetence.

At any rate, none of the competing forms of government have nearly so effectual a procedure for putting a good untechnical minister to correct and impel the routine ones. There are but four important forms of government in the present state of the world, — the Parliamentary, the Presidential, the Hereditary, and the Dictatorial, or Revolutionary. Of these I have shown that, as now worked in America, the presidential form of government is incompatible with a skilled bureaucracy. If the whole official class change when a new party goes out or comes in, a good official system is impossible. Even if more officials should be permanent in America than now, still, vast numbers will always be changed. The whole issue is based on a single election — on the choice of President; by that internecine conflict all else is won or lost. The managers of the contest have that greatest possible facility in using what I may call patronage-bribery. Everybody knows that, as a fact, the President can give what places he likes to what persons, and when his friends tell A. B., "If we win C. D. shall be turned out of Utica post office, and you, A. B., shall have it", A. B. believes it, and is justified in doing so. But no individual member of Parliament can promise places effectually. He may not be able to give the places. His party may come in, but he will be powerless. In the United States party intensity is aggravated by concentrating an overwhelming importance on a single contest, and the efficiency of

promised offices as a means of corruption is augmented, because the victor can give what he likes to whom he likes.

Nor is this the only defect of a Presidential government in reference to the choice of officers. The President has the principal anomaly of a Parliamentary government without having it corrective. At each change of party the President distributes (as here) the principal offices to his principal supporters. But he has an opportunity for singular favoritism. The minister lurks in the office; he need do nothing in public; he need not show for years whether he is a fool or wise. The nation can tell what a Parliamentary member is by the open test of Parliament; but no one, save from actual contact, or by rare position, can tell anything certain of a Presidential minister.

The case of a minister under an hereditary form of government is yet worse. The hereditary king may be weak; may be under the government of women; may appoint a minister from childish motives; may remove one from absurd whims. There is no security that an hereditary king will be competent to choose a good chief minister, and thousands of such kings have chosen millions of bad ministers.

By the Dictatorial, or Revolutionary, sort of government, I mean that very important sort in which the sovereign — the absolute sovereign — is selected by insurrection. In theory, one would have certainly hoped that by this time such a crude elective machinery would have been reduced to a secondary part. But, in fact, the greatest nation (or, perhaps, after the exploits of Bismarck, I should say one of the two greatest nations of the Continent) vacillates between the Revolutionary and the Parliamentary, and now is governed under the revolutionary form. France elects its ruler in the streets of Paris. Flatterers may suggest that the democratic empire will become hereditary, but close observers know that it cannot. The idea of the government is that the Emperor represents the people in capacity, in judgment, in instinct.

But no family through generations can have sufficient, or half sufficient, mind to do so. The representative despot must be chosen by fighting, as Napoleon I. and Napoleon III. were chosen. And such a government is likely, whatever be its other defects, to have a far better and abler administration than any other government. The head of the government must be a man of the most consummate ability. He cannot keep his place, he can hardly keep his life, unless he is. He is sure to be active, because he knows that his power, and perhaps his head, may be lost if he be negligent. The whole frame of his State is strained to keep down revolution. The most difficult of all political problems is to be solved — the people are to be at once thoroughly restrained and thoroughly pleased. The executive must be like a steel shirt of the middle ages — extremely hard and extremely flexible. It must give way to attractive novelties which do not hurt; it must resist such as are dangerous; it must maintain old things which are good and fitting; it must alter such as cramp and give pain. The dictator dare not appoint a bad minister if he would. I admit that such a despot is a better selector of administrators than a parliament; that he will know how to mix fresh minds and used minds better; that he is under a stronger motive to combine them well; that here is to be seen the best of all choosers with the keenest motives to choose. But I need not prove in England that the revolutionary selection of rulers obtains administrative efficiency at a price altogether transcending its value; that it shocks credit by its catastrophes; that for intervals it does not protect property or life; that it maintains an undergrowth of fear through all prosperity; that it may take years to find the true capable despot; that the interregna of the incapable are full of all evil; that the fit despot may die as soon as found; that the good administration and all else hang by the thread of his life.

But if, with the exception of this terrible revolutionary government, a Parliamentary government upon principle surpasses all its competitors in administrative efficiency,

why is it that our English Government, which is beyond comparison the best of Parliamentary governments, is not celebrated through the world for administrative efficiency? It is noted for many things, why is it not noted for that? Why, according to popular belief, is it rather characterized by the very contrary?

One great reason of the diffused impression is, that the English Government attempts so much. Our military system is that which is most attacked. Objectors say we spend much more on our army than the great military monarchies, and yet with an inferior result. But, then, what we attempt is incalculably more difficult. The continental monarchies have only to defend compact European territories by the many soldiers whom they force to fight; the English try to defend without any compulsion — only by such soldiers as they persuade to serve — territories far surpassing all Europe in magnitude, and situated all over the habitable globe. Our Horse Guards and War Office may not be at all perfect — I believe they are not; but if they had sufficient recruits selected by force of law — if they had, as in Prussia, the absolute command of each man's time for a few years, and the right to call him out afterward when they liked, we should be much surprised at the sudden ease and quickness with which they did things. I have no doubt too that any accomplished soldier of the Continent would reject as impossible what we after a fashion effect. He would not attempt to defend a vast scattered empire, with many islands, a long frontier line in every continent, and a very tempting bit of plunder at the centre, by mere volunteer recruits, who mostly come from the worst class of the people — whom the Great Duke called the "scum of the earth" — who come in uncertain numbers year by year — who by some political accident may not come in adequate numbers, or at all, in the year we need them most. Our War Office attempts what foreign War Offices (perhaps rightly) would not try at; their officers have means of incalculable force denied to ours, though ours is set to harder tasks.

Again, the English navy undertakes to defend a line of coast and a set of dependencies far surpassing those of any continental power. And the extent of our operations is a singular difficulty just now. It requires us to keep a large stock of ships and arms. But on the other hand, there are most important reasons why we should not keep much. The naval art and the military art are both in a state of transition; the last discovery of to-day is out of date, and superseded by an antagonistic discovery to-morrow. Any large accumulation of vessels or guns is sure to contain much that will be useless, unfitting, antediluvian, when it comes to be tried. There are two cries against the Admiralty which go on side by side: one says, "We have not ships enough, no 'relief' ships, no NAVY, to tell the truth"; the other cry says, "We have all the wrong ships, all the wrong guns, and nothing but the wrong; in their foolish constructive mania the Admiralty have been building when they ought to have been waiting; they have heaped a curious museum of exploded inventions, but they have given us nothing serviceable." The two cries for opposite policies go on together, and blacken our executive together, though each is a defense of the executive against the other.

Again, the Home Department in England struggles with difficulties of which abroad they have long got rid. We love independent "local authorities," little centres of outlying authority. When the metropolitan executive most wishes to act, it cannot act effectually because these lesser bodies hesitate, deliberate, or even disobey. But local independence has no necessary connection with parliamentary government. The degree of local freedom desirable in a country varies according to many circumstances, and a parliamentary government may consist with any degree of it. We certainly ought not to debit parliamentary government as a general and applicable polity with the particular vices of the guardians of the poor in England, though it is so debited every day.

Again, as our administration has in England this

peculiar difficulty, so on the other hand foreign competing administrations have a peculiar advantage. Abroad a man under government is a superior being; he is higher than the rest of the world; he is envied by almost all of it. This gives the Government the easy pick of the *élite* of the nation. All clever people are eager to be under government, and are hardly to be satisfied elsewhere. But in England there is no such superiority, and the English have no such feeling. We do not respect a stamp-office clerk, or an exciseman's assistant. A pursy grocer considers he is much above either. Our Government cannot buy for minor clerks the best ability of the nation in the cheap currency of pure honor, and no government is rich enough to buy very much of it in money. Our mercantile opportunities allure away the most ambitious minds. The foreign *bureaux* are filled with a selection from the ablest men of the nation, but only a very few of the best men approach the English offices.

But these are neither the only nor even the principal reasons why our public administration is not so good as, according to principle and to the unimpeded effects of parliamentary government, it should be. There are two great causes at work, which in their consequences run out into many details, but which in their fundamental nature may be briefly described. The first of these causes is our ignorance. No polity can get out of a nation more than there is in the nation. A free government is essentially a government by persuasion; and as are the people to be persuaded, and as are the persuaders, so will that government be. On many parts of our administration the effect of our extreme ignorance is at once plain. The foreign policy of England has for many years been, according to the judgment now in vogue, inconsequent, fruitless, casual; aiming at no distinct preimagined end, based on no steadily preconceived principle. I have not room to discuss with how much or how little abatement this decisive censure should be accepted. However, I entirely concede that our recent foreign policy has been open to very grave and serious

blame. But would it not have been a miracle if the English people, directing their own policy, and being what they are, had directed a good policy? Are they not above all nations divided from the rest of the world, insular both in situation and in mind, both for good and for evil? Are they not out of the current of common European causes and affairs? Are they not a race contemptuous of others? Are they not a race with no special education or culture as to the modern world, and too often despising such culture? Who could expect such a people to comprehend the new and strange events of foreign places? So far from wondering that the English Parliament has been inefficient in foreign policy, I think it is wonderful, and another sign of the rude, vague imagination that is at the bottom of our people, that we have done so well as we have.

Again, the very conception of the English Constitution, as distinguished from a purely Parliamentary constitution is, that it contains "dignified" parts — parts, that is, retained, not for intrinsic use, but from their imaginative attraction upon an uncultured and rude population. All such elements tend to diminish simple efficiency. They are like the additional and solely-ornamental wheels introduced into the clocks of the Middle Ages, which tell the then age of the moon or the supreme constellation; which make little men or birds come out and in theatrically. All such ornamental work is a source of friction and error; it prevents the time being marked accurately; each new wheel is a new source of imperfection. So if authority is given to a person, not on account of his working fitness, but on account of his imaginative efficiency, he will commonly impair good administration. He may do something better than good work of detail, but will spoil good work of detail. The English aristocracy is often of this sort. It has an influence over the people of vast value still, and of infinite value formerly. But no man would select the cadets of an aristocratic house as desirable administrators. They have peculiar disadvantages in the acquisition of business

knowledge, business training, and business habits, and they have no peculiar advantages.

Our middle class, too, is very unfit to give us the administrators we ought to have. I cannot now discuss whether all that is said against our education is well grounded; it is called by an excellent judge "pretentious, insufficient, and unsound." But I will say that it does not fit men to be men of business as it ought to fit them. Till lately the very simple attainments and habits necessary for a banker's clerk had a scarcity-value. The sort of education which fits a man for the higher posts of practical life is still very rare; there is not even a good agreement as to what it is. Our public officers cannot be as good as the corresponding officers of some foreign nations till our business education is as good as theirs.*

But strong as is our ignorance in deteriorating our administration, another cause is stronger still. There are but two foreign administrations probably better than ours, and both these have had something which we have not had. Theirs in both cases were arranged by a man of genius, after careful forethought, and upon a special design. Napoleon built upon a clear stage which the French Revolution bequeathed him. The originality once ascribed to his edifice was indeed untrue; Tocqueville and Lavergne have shown that he did but run up a conspicuous structure in imitation of a latent one before concealed by the mediæval complexities of the old *régime*. But what we are concerned with now is, not Napoleon's originality, but his work. He undoubtedly settled the administration of France upon an effective, consistent, and enduring system; the succeeding governments have but worked the mechanism they inherited from him. Frederick the Great did the same in the new monarchy of Prussia. Both the French system and the Prussian are new machines, made in civilized times to do their appropriate work.

*I am happy to state that this evil is much diminishing. The improvement of school education of the middle class in the last twenty-five years is marvelous.

The English offices have never, since they were made, been arranged with any reference to one another; or rather they were never made, but grew as each could. The sort of free trade which prevailed in public institutions in the English middle ages is very curious. Our three courts of law — the Queen's Bench, the Common Pleas, and the Exchequer — for the sake of the fees extended an originally contracted sphere into the entire sphere of litigation. *Boni judicis est ampliare jurisdictionem*, went the old saying; or, in English, "It is the mark of a good judge to augment the fees of his court," his own income, and the income of his subordinates. The central administration, the Treasury, never asked any account of the moneys the courts thus received; so long as it was not asked to pay anything, it was satisfied. Only last year one of the many remnants of this system cropped up, to the wonder of the public. A clerk in the Patent Office stole some fees, and naturally the men of the nineteenth century thought our principal finance minister, the Chancellor of the Exchequer, would be, as in France, responsible for it. But the English law was different somehow. The Patent Office was under the Lord Chancellor, and the Court of Chancery is one of the multitude of our institutions which owe their existence to fee competition,—and so it was the Lord Chancellor's business to look after the fees, which of course, as an occupied judge, he could not. A certain act of Parliament did indeed require that the fees of the Patent Office should be paid into the "Exchequer;" and, again, the "Chancellor of the Exchequer," was thought to be responsible in the matter, but only by those who did not know. According to our system the Chancellor of the Exchequer is the enemy of the Exchequer; a whole series of enactments try to protect it from him. Until a few months ago there was a very lucrative sinecure called the "Comptrollership of the Exchequer," designed to guard the Exchequer against its Chancellor; and the last holder, Lord Monteagle, used to say he was the pivot of the English Constitution. I have not room to explain

what he meant, and it is not needful; what is to the purpose is that, by an inherited series of historical complexities, a defaulting clerk in an office of no litigation was not under natural authority, the finance minister, but under a far-away judge who had never heard of him.

The whole office of the Lord Chancellor is a heap of anomalies. He is a judge, and it is contrary to obvious principle that any part of administration should be entrusted to a judge; it is of very grave moment that the administration of justice should be kept clear of any sinister temptations. Yet the Lord Chancellor, our chief judge, sits in the cabinet, and makes party speeches in the Lords. Lord Lyndhurst was a principal Tory politician, and yet he presided in the O'Connell case. Lord Westbury was in chronic wrangle with the bishops, but he gave judgment upon "Essays and Reviews." In truth, the Lord Chancellor became a cabinet minister, because, being near the person of the sovereign, he was high in court precedence, and not upon a political theory wrong or right.

A friend once told me that an intelligent Italian asked him about the principal English officers, and that he was very puzzled to explain their duties, and especially to explain the relation of their duties to their titles. I do not remember all the cases, but I can recollect that the Italian could not comprehend why the First "Lord of the Treasury" had as a rule nothing to do with the Treasury, or why the "Woods and Forests" looked after the sewerage of towns. This conversation was years before the cattle plague, but I should like to have heard the reasons why the Privy Council office had charge of that malady. Of course one could give an historical reason, but I mean an administrative reason — a reason which would show, not how it came to have the duty, but why in future it should keep it.

But the unsystematic and casual arrangement of our public offices is not more striking than their difference of arrangement for the one purpose they have in common.

They all, being under the ultimate direction of a Parliamentary official, ought to have the best means of bringing the whole of the higher concerns of the office before that official. When the fresh mind rules, the fresh mind requires to be informed. And most business being rather alike, the machinery for bringing it before the extrinsic chief ought, for the most part, to be similar; at any rate, where it is different it ought to be different upon reason, and where it is similar, similar upon reason. Yet there are almost no two offices which are exactly alike in the defined relations of the permanent official to the parliamentary chief. Let us see. The ARMY AND NAVY are the most similar in nature, yet there is in the army a permanent outside office called the Horse Guards, to which there is nothing else like. In the navy, there is a curious anomaly — a Board of Admiralty, also changing with every government, which is to instruct the First Lord in what he does not know. The relations between the First Lord and the Board have not always been easily intelligible, and those between the War Office and the Horse Guards are in extreme confusion. Even now a parliamentary paper relating to them has just been presented to the House of Commons, which says the fundamental and ruling document cannot be traced beyond the possession of Sir George Lewis, who was Secretary for War three years since; and the confused details are endless, as they must be in a chronic contention of offices. At the BOARD OF TRADE there is only the hypothesis of a Board; it has long ceased to exist. Even the President and Vice-President do not regularly meet for the transaction of affairs. The patent of the latter is only to transact business in the absence of the President, and if the two are not intimate, and the President chooses to act himself, the Vice-President sees no papers, and does nothing. At the TREASURY the shadow of a Board exists, but its members have no power, and are the very officials whom Canning said existed to make a House, to keep a House, and to cheer the ministers. The INDIA OFFICE has a fixed "Council;" but the COLONIAL OFFICE, which rules over

our other dependencies and colonies, has not, and never had, the vestige of a council. Any of these varied Constitutions may be right, but all of them can scarcely be right.

In truth the real constitution of a permanent office to be ruled by a permanent chief has been discussed only once in England; that case was a peculiar and anomalous one, and the decision then taken was dubious. A new India Office, when the East India Company was abolished, had to be made. The late Mr. James Wilson, a consummate judge of administrative affairs, then maintained that no council ought to be appointed *eo nomine*, but that the true council of a cabinet minister was a certain number of highly paid, much occupied, responsible secretaries, whom the minister could consult, either separately or together, as, and when, he chose. Such secretaries, Mr. Wilson maintained, must be able, for no minister will sacrifice his own convenience, and endanger his own reputation by appointing a fool to a post so near himself, and where he can do much harm. A member of a board may easily be incompetent; if some other members and the chairman are able, the addition of one or two stupid men will not be felt; they will receive their salaries and do nothing. But a permanent under-secretary, charged with a real control over much important business, must be able, or his superior will be blamed, and there will be "a scrape in Parliament."

I cannot here discuss, nor am I competent to discuss, the best mode of composing public offices, and of adjusting them to a parliamentary head. There ought to be on record skilled evidence on the subject before a person without any specific experience can to any purpose think about it. But I may observe that the plan which Mr. Wilson suggested is that followed in the most successful part of our administration, the "Ways and Means" part. When the Chancellor of the Exchequer prepares a Budget, he requires from the responsible heads of the revenue department their estimates of the public revenue upon the

preliminary hypothesis that no change is made, but that last year's taxes will continue; if, afterward, he thinks of making an alteration, he requires a report on that too. If he has to renew exchequer bills, or operate anyhow in the city, he takes the opinion, oral or written, of the ablest and most responsible person at the National Debt Office, and the ablest and most responsible at the Treasury. Mr. Gladstone, by far the greatest Chancellor of the Exchequer of this generation, one of the very greatest of any generation, has often gone out of his way to express his obligation to these responsible skilled advisers. The more a man knows himself, the more habituated he is to action in general, the more sure he is to take and to value responsible counsel emanating from ability and suggested by experience. That this principle brings good fruit is certain. We have by unequivocal admission, the best budget in the world. Why should not the rest of our administration be as good if we did but apply the same method to it?

I leave this to stand as it was originally written since it does not profess to rest on my own knowledge, and only offers a suggestion on good authority. Recent experience seems, however, to show that in all great administrative departments there ought to be some one permanent responsible head through whom the changing parliamentary chief always acts, from whom he learns everything, and to whom he communicates everything. The daily work of the Exchequer is a trifle compared with that of the Admiralty or the Home Office, and therefore a single principal head is not there so necessary. But the preponderance of evidence at present is that in all offices of very great work some one such head is essential.

VII.

ITS SUPPOSED CHECKS AND BALANCES

In a former essay I devoted an elaborate discussion to the comparison of the royal and unroyal form of parliamentary government. I showed that at the formation of a ministry, and during the continuance of a ministry, a really sagacious monarch might be of rare use. I ascertained that it was a mistake to fancy that at such times a constitutional monarch had no *rôle* and no duties. But I proved likewise that the temper, the disposition, and the faculties then needful to fit a constitutional monarch for usefulness were very rare, at least as rare as the faculties of a great absolute monarch, and that a common man in that place is apt to do at least as much harm as good — perhaps more harm. But in that essay I could not discuss fully the functions of a king at the conclusion of an administration, for then the most peculiar parts of the English government — the power to dissolve the House of Commons, and the power to create new peers — come into play, and until the nature of the House of Lords and the nature of the House of Commons had been explained, I had no premises for an argument as to the characteristic action of the king upon them. We have since considered the functions of the two Houses, and also the effects of changes of ministry on our administrative system; we are now, therefore, in a position to discuss the functions of a king at the end of an administration.

I may seem over formal in this matter, but I am very formal on purpose. It appears to me that the functions of our executive in dissolving the Commons and augmenting the Peers are among the most important, and

the least appreciated, parts of our whole government, and that hundreds of errors have been made in copying the English Constitution from not comprehending them.

Hobbes told us long ago, and everybody now understands that there must be a supreme authority, a conclusive power, in every State on every point somewhere. The idea of government involves it — when that idea is properly understood. But there are two classes of governments. In one the supreme determining power is upon all points the same; in the other, that ultimate power is different upon different points — now resides in one part of the Constitution, and now in another. The Americans thought that they were imitating the English in making their Constitution upon the last principle — in having one ultimate authority for one sort of matter, and another for another sort. But in truth, the English Constitution is the type of the opposite species, it has only one authority for all sorts of matters. To gain a living conception of the difference let us see what the Americans did.

First, they altogether retained what, in part, they could not help, the sovereignty of the separate States. A fundamental article of the Federal constitution says that the powers not "delegated" to the central government are "reserved to the States respectively." And the whole recent history of the Union — perhaps all its history — has been more determined by that enactment than by any other single cause. The sovereignty of the principal matters of State has rested not with the highest government, but with the subordinate government. The Federal government could not touch slavery — the "domestic institution" which divided the Union into two halves, unlike one another in morals, politics, and social condition, and at last set them to fight. This determining political fact was not in the jurisdiction of the highest government in the country, where you might expect its highest wisdom, nor in the central government, where you might look for impartiality, but in local governments, where petty interests were sure to be considered,

and where only inferior abilities were likely to be employed. The capital fact was reserved for the minor jurisdictions. Again there has been only one matter comparable to slavery in the United States, and that has been vitally affected by the State governments also. Their ultra-democracy is not a result of Federal legislation, but of State legislation. The Federal constitution deputed one of the main items of its structure to the subordinate governments. One of its clauses provides that the suffrages for the Federal House of Representatives shall be, in each State, the same as for the most numerous branch of the legislature of that State; and as each State fixes the suffrage for its own legislatures, the States altogether fix the suffrage for the Federal Lower Chamber. By another clause of the Federal constitution the States fix the electoral qualification for voting at a presidential election. The primary element in a free government — the determination how many people shall have a share in it — in America depends not on the Government but on certain subordinate local, and sometimes, as in the South now, hostile bodies.

Doubtless the framers of the Constitution had not much choice in the matter. The wisest of them were anxious to get as much power for the central government, and to leave as little to the local governments as they could. But a cry was got up that this wisdom would create a tyranny and impair freedom, and with that help, local jealousy triumphed easily. All Federal government is, in truth, a case in which what I have called the dignified elements of government do not coincide with the serviceable elements. At the beginning of every league the separate States are the old governments which attract and keep the love and loyalty of the people; the Federal government is a useful thing, but new and unattractive. It must concede much to the State governments, for it is indebted to them for motive power: they are the governments which the people voluntarily obey. When the State governments are not thus loved, they vanish as the little Italian and the little German poten-

tates vanish; no federation is needed; a single central government rules all.

But the division of the sovereign authority in the American Constitution is far more complex than this. The part of that authority left to the Federal government is itself divided and subdivided. The greatest instance is the most obvious. The Congress rules the law, but the President rules the administration. One means of unity the Constitution does give; the President can veto laws he does not like. But when two-thirds of both Houses are unanimous (as has lately happened), they can overrule the President and make the laws without him; so here there are three separate repositories of the legislative power in different cases: first, Congress and the President when they agree; next, the President when he effectually exerts his power; then, the requisite two-thirds of Congress when they overrule the President. And the President need not be over-active in carrying out a law he does not approve of. He may indeed be impeached for gross neglect; but between criminal and non-feasance and zealous activity there are infinite degrees. Mr. Johnson does not carry out the Freedman's Bureau Bill as Mr. Lincoln, who approved of it, would have carried it out. The American Constitution has a special contrivance for varying the supreme legislative authority in different cases, and dividing the administrative authority from it in all cases.

But the administrative power itself is not left thus simple and undivided. One most important part of administration is international policy, and the supreme authority here is not in the President, still less in the House of Representatives, but in the Senate. The President can only make treaties, "provided two-thirds of Senators present" concur. The sovereignty therefore for the greatest international questions is in a different part of the State altogether from any common administrative or legislative question. It is put in a place by itself.

Again, the Congress declares war, but they would find it very difficult, according to the recent construction of

their laws, to compel the President to make a peace. The authors of the Constitution doubtless intended that Congress should be able to control the American executive as our Parliament controls ours. They placed the granting of supplies in the House of Representatives exclusively. But they forgot to look after "paper money;" and now it has been held that the President has power to emit such money without consulting Congress at all. The first part of the late war was so carried on by Mr. Lincoln; he relied not on the grants of Congress, but on the prerogative of emission. It sounds a joke, but it is true nevertheless, that this power to issue greenbacks is decided to belong to the President as commander-in-chief of the army; it is part of what was called the "war power." In truth, money was wanted in the late war, and the administration got it in the readiest way; and the nation, glad not to be more taxed, wholly approved of it. But the fact remains that the President has now, by precedent and decision, a mighty power to continue a war without the consent of Congress, and perhaps against its wish. Against the united will of the American PEOPLE a President would of course be impotent; such is the genius of the place and nation that he would never think of it. But when the nation was (as of late) divided into two parties, one cleaving to the President the other to the Congress, the now unquestionable power of the President to issue paper-money may give him the power to continue the war though Parliament (as we should speak) may enjoin the war to cease.

And lastly, the whole region of the very highest questions is withdrawn from the ordinary authorities of the State, and reserved for special authorities. The "constitution" cannot be altered by any authorities within the Constitution, but only by authorities without it. Every alteration of it, however urgent or however trifling, must be sanctioned by a complicated proportion of States or legislatures. The consequence is that the most obvious evils cannot be quickly remedied; that the most absurd fictions must be framed to evade the plain sense of mis-

chievous clauses; that a clumsy working and curious technicality mark the politics of a rough-and-ready people. The practical arguments and the legal disquisitions in America are often like those of trustees carrying out a misdrawn will — the sense of what they mean is good, but it can never be worked out fully or defended simply, so hampered is it by the old words of an old testament.

These instances (and others might be added) prove, as history proves too, what was the principal thought of the American constitution-makers. They shrank from placing sovereign power anywhere. They feared that it would generate tyranny; George III. had been a tyrant to them, and come what might, they would not make a George III. Accredited theories said that the English Constitution divided the sovereign authority, and in imitation the Americans split up theirs.

The result is seen now. At the critical moment of their history there is no ready, deciding power. The South, after a great rebellion, lies at the feet of its conquerors; its conquerors have to settle what to do with it.* They must decide the conditions upon which the Secessionists shall again become fellow citizens, shall again vote, again be represented, again perhaps govern. The most difficult of problems is how to change late foes into free friends. The safety of their great public debt, and with that debt their future credit and their whole power in future wars, may depend on their not giving too much power to those who must see in the debt the cost of their own subjugation, and who must have an inclination toward the repudiation of it, now that their own debt,— the cost of their defense,— has been repudiated. A race, too, formerly enslaved, is now at the mercy of men who hate and despise it, and those who set it free are bound to give it a fair chance for new life. The slave was formerly protected by his chains; he was an article of value; but now he belongs to himself, no one but himself has an interest in his life;

* This was written just after the close of the Civil War, but I do not know that the great problem stated in it has as yet been adequately solved.

and he is at the mercy of the "mean whites," whose labor he depreciates, and who regard him with a loathing hatred. The greatest moral duty ever set before a government, and the most fearful political problem ever set before a government, are now set before the American. But there is no decision, and no possibility of a decision. The President wants one course, and has power to prevent any other; the Congress wants another course, and has power to prevent any other. The splitting of sovereignty into many parts amounts to there being no sovereign.

The Americans of 1787 thought they were copying the English Constitution, but they were contriving a contrast to it. Just as the American is the type of composite governments, in which the supreme power is divided between many bodies and functionaries, so the English is the type of SIMPLE constitutions, in which the ultimate power upon all questions is in the hands of the same persons.

The ultimate authority in the English Constitution is a newly-elected House of Commons. No matter whether the question upon which it decides be administrative or legislative; no matter whether it concerns high matters of the essential constitution or small matters of daily detail; no matter whether it be a question of making a war or continuing a war; no matter whether it be the imposing a tax or the issuing a paper currency; no matter whether it be a question relating to India, or Ireland, or London,—a new House of Commons can despotically and finally resolve.

The House of Commons may, as was explained, assent in minor matters to the revision of the House of Lords, and submit in matters about which it cares little to the suspensive veto of the House of Lords; but when sure of the popular assent, and when freshly elected, it is absolute,—it can rule as it likes and decide as it likes. And it can take the best security that it does not decide in vain. It can ensure that its decrees shall be executed, for it, and it alone, appoints the executive; it can inflict the most severe of all penal-

ties on neglect, for it can remove the executive. It can choose, to effect, its wishes, those who wish the same; and so its will is sure to be done. A stipulated majority of both Houses of the American Congress can overrule by stated enactment their executive; but the popular branch of our legislature can make and unmake ours.

The English Constitution, in a word, is framed on the principle of choosing a single sovereign authority, and making it good: the American, upon the principle of having many sovereign authorities, and hoping that their multitude may atone for their inferiority. The Americans now extol their institutions, and so defraud themselves of their due praise. But if they had not a genius for politics; if they had not a moderation in action singularly curious where superficial speech is so violent; if they had not a regard for law, such as no great people have yet evinced, and infinitely surpassing ours, the multiplicity of authorities in the American Constitution would long ago have brought it to a bad end. Sensible shareholders, I have heard a shrewd attorney say, can work ANY deed of settlement; and so the men of Massachusetts could, I believe, work ANY constitution. But political philosophy must analyze political history; it must distinguish what is due to the excellence of the people, and what to the excellence of the laws; it must carefully calculate the exact effect of each part of the Constitution, though thus it may destroy many an idol of the multitude, and detect the secret of utility where but few imagined it to lie.

How important singleness and unity are in political action, no one, I imagine, can doubt. We may distinguish and define its parts; but policy is a unit and a whole. It acts by laws — by administrators; it requires now one, now the other; unless it can easily move both it will be impeded soon; unless it has an absolute command of both its work will be imperfect. The interlaced character of human affairs requires a single determining energy; a distinct force for each artificial compartment will make

but a motley patchwork, if it live long enough to make anything. The excellence of the British Constitution is that it has achieved this unity; that in it the sovereign power is single, possible and good.

The success is primarily due to the peculiar provision of the English Constitution, which places the choice of the executive in the "people's house;" but it could not have been thoroughly achieved except for two parts, which I venture to call the "safety-valve" of the Constitution, and the "regulator."

The safety-valve is the peculiar provision of the Constitution, of which I spoke at great length in my essay on the House of Lords. The head of the executive can overcome the resistance of the second chamber by choosing new members of that chamber; if he do not find a majority, he can make a majority. This is a safety-valve of the truest kind. It enables the popular will — the will of which the executive is the exponent, the will of which it is the appointee — to carry out within the Constitution desires and conceptions which one branch of the Constitution dislikes and resists. It lets forth a dangerous accumulation of inhibited power, which might sweep this Constitution before it, as like accumulations have often swept away like constitutions.

The regulator, as I venture to call it, of our single sovereignty is the power of dissolving the otherwise sovereign chamber confided to the chief executive. The defects of the popular branch of the legislature as a sovereign have been expounded at length in a previous essay. Briefly, they may be summed up in three accusations.

First. Caprice is the commonest and most formidable vice of a choosing chamber. Wherever in our colonies parliamentary government is unsuccessful, or is alleged to be unsuccessful, this is the vice which first impairs it. The Assembly cannot be induced to maintain any administration; it shifts its selection now from one minister to another minister, and in consequence there is no government at all.

Secondly. The very remedy for such caprice entails another evil. The only mode by which a cohesive majority and a lasting administration can be upheld in a parliamentary government is party organization; but that organization itself tends to aggravate party violence and party animosity. It is, in substance, subjecting the whole nation to the rule of a section of the nation, selected because of its specialty. Parliamentary government is, in its essence, a sectarian government, and is possible only when sects are cohesive.

Thirdly. A Parliament, like every other sort of sovereign, has peculiar feelings, peculiar prejudices, peculiar interests; and it may pursue these in opposition to the desires, and even in opposition to the well-being of the nation. It has its selfishness as well as its caprice and its parties.

The mode in which the regulating wheel of our Constitution produces its effect is plain. It does not impair the authority of Parliaments as a species, but it impairs the power of the individual Parliament. It enables a particular person outside Parliament to say, "You Members of Parliament are not doing your duty. You are gratifying caprice at the cost of the nation. You are indulging party spirit at the cost of the nation. You are helping yourself at the cost of the nation. I will see whether the nation approves what you are doing or not; I will appeal from Parliament No. 1 to Parliament No. 2."

By far the best way to appreciate this peculiar provision of our Constitution is to trace it in action,—to see, as we saw before of the other powers of English royalty, how far it is dependent on the existence of an hereditary king, and how far it can be exercised by a premier whom Parliament elects. When we examine the nature of the particular person required to exercise the power, a vivid idea of that power is itself brought home to us.

First. As to the caprice of Parliament in the choice of a premier, who is the best person to check it? Clearly the premier himself. He is the person most interested

in maintaining his administration, and therefore the most likely person to use efficiently and dexterously the power by which it is to be maintained. The intervention of an extrinsic king occasions a difficulty. A capricious Parliament may always hope that his caprice may coincide with theirs. In the days when George III. assailed his governments, the premier was habitually deprived of his due authority. Intrigues were encouraged because it was always dubious whether the king-hated minister would be permitted to appeal from the intriguers, and always a chance that the conspiring monarch might appoint one of the conspirators to be premier in his room. The caprice of Parliament is better checked when the faculty of dissolution is intrusted to its appointee, than when it is set apart in an outlying and an alien authority.

But, on the contrary, the party zeal and the self-seeking of Parliament are best checked by an authority which has no connection with Parliament or dependence upon it — supposing that such authority is morally and intellectually equal to the performance of the intrusted function. The Prime Minister obviously being the nominee of a party majority is likely to share its feeling, and is sure to be obliged to SAY that he shares it. The actual contact with affairs is indeed likely to purify him from many prejudices, to tame him of many fanaticisms, to beat out of him many errors. The present Conservative government contains more than one member who regards his party as intellectually benighted; who either never speaks their peculiar dialect, or who speaks it condescendingly, and with an "aside"; who respects their accumulated prejudices as the "potential energies" on which he subsists, but who despises them while he lives by them. Years ago Mr. Disraeli called Sir Robert Peel's Ministry — the last Conservative ministry that had real power — "an organized hypocrisy," so much did the ideas of its "head" differ from the sensations of its "tail." Probably he now comprehends — if he did not always — that the air of Downing Street brings certain ideas to those who

live there, and that the hard, compact prejudices of opposition are soon melted and mitigated in the great gulf stream of affairs. Lord Palmerston, too, was a typical example of a leader lulling, rather than arousing, assuaging rather than acerbating the minds of his followers. But though the composing effect of close difficulties will commonly make a premier cease to be an immoderate partisan, yet a partisan to some extent he must be, and a violent one he may be; and in that case he is not a good person to check the party. When the leading sect (so to speak) in Parliament is doing what the nation do not like, an instant appeal ought to be registered, and Parliament ought to be dissolved. But a zealot of a premier will not appeal; he will follow his formulæ; he will believe he is doing good service when, perhaps, he is but pushing to unpopular consequences the narrow maxims of an inchoate theory. At such a minute a constitutional king — such as Leopold I. was, and as Prince Albert might have been — is invaluable; he can and will prevent Parliament from hurting the nation.

Again, too, on the selfishness of Parliament an extrinsic check is clearly more efficient than an intrinsic. A premier who is made by Parliament may share the bad impulses of those who chose him; or, at any rate, he may have made "capital" out of them — he may have seemed to share them. The self-interests, the jobbing propensities of the assembly are sure indeed to be of very secondary interest to him. What he will care most for is the permanence, is the interest — whether corrupt or uncorrupt — of his own ministry. He will be disinclined to anything coarsely unpopular. In the order of nature, a new assembly must come before long, and he will be indisposed to shock the feelings of the electors from whom that assembly must emanate. But though the interest of the minister is inconsistent with appalling jobbery, he will be inclined to mitigated jobbery. He will temporize; he will try to give a seemly dress to unseemly matters; to do as much harm as will content the assembly, and yet not so much harm as will offend

the nation. He will not shrink from becoming a *particeps criminis*; he will but endeavor to dilute the crime. The intervention of an extrinsic, impartial, and capable authority — if such can be found — will undoubtedly restrain the covetousness as well as the factiousness of a choosing assembly.

But can such a head be found? In one case I think it has been found. Our colonial governors are precisely *Dei ex machinâ*. They are always intelligent, for they have to live by a difficult trade; they are nearly sure to be impartial, for they come from the ends of the earth; they are sure not to participate in the selfish desires of any colonial class or body, for long before those desires can have attained fruition they will have passed to the other side of the world, be busy with other faces and other minds, be almost out of hearing what happens in a region they have half forgotten. A colonial governor is a super-parliamentary authority, animated by a wisdom which is probably in quantity considerable, and is different from that of the local Parliament, even if not above it. But even in this case the advantage of this extrinsic authority is purchased at a heavy price — a price which must not be made light of, because it is often worth paying. A colonial governor is a ruler who has no permanent interest in the colony he governs; who perhaps had to look for it in the map when he was sent thither; who takes years before he really understands its parties and its controversies; who, though without prejudice himself, is apt to be a slave to the prejudices of local people near him; who inevitably, and almost laudably, governs not in the interest of the colony, which he may mistake, but in his own interest, which he sees and is sure of. The first desire of a colonial governor is not to get into a "scrape," not to do anything which may give trouble to his superiors — the Colonial Office — at home, which may cause an untimely and dubious recall, which may hurt his after career. He is sure to leave upon the colony the feeling that they have a ruler who only half knows them, and does not so much as half care for them. We hardly

appreciate this common feeling in our colonies, because WE appoint THEIR sovereign; but we should understand it in an instant if, by a political metamorphosis, the choice were turned the other way — if THEY appointed OUR sovereign. We should then say at once, "How is it possible a man from New Zealand can understand England? how is it possible that a man longing to get back to the antipodes can care for England? how can we trust one who lives by the fluctuating favor of a distant authority? how can we heartily obey one who is but a foreigner with the accident of an identical language?"

I dwell on the evils which impair the advantage of colonial governorship because that is the most favored case of super-parliamentary royalty, and because from looking at it we can bring freshly home to our minds what the real difficulties of that institution are. We are so familiar with it, that we do not understand it. We are like people who have known a man all their lives, and yet are quite surprised when he displays some obvious characteristic which casual observers have detected at a glance. I have known a man who did not know what color his sister's eyes were, though he had seen her every day for twenty years; or rather he did not know BECAUSE he had so seen her: so true is the philosophical maxim that we neglect the constant element in our thoughts, though it is probably the most important, and attended almost only to the varying elements — the differentiating elements (as men now speak) — though they are apt to be less potent. But when we perceive by the roundabout example of a colonial governor how difficult the task of a constitutional king is in the exercise of the function of dissolving Parliament, we at once see how unlikely it is that an hereditary monarch will be possessed of the requisite faculties.

An hereditary king is but an ordinary person, upon an average, at best; he is nearly sure to be badly educated for business, he is very little likely to have a taste for business; he is solicited from youth by every temptation to pleasure; he probably passed the whole of his youth in

the vicious situation of the heir-apparent, who can do nothing because he has no appointed work, and who will be considered almost to outstep his function if he undertake optional work. For the most part, a constitutional king is a DAMAGED common man; not forced to business by necessity as a despot often is, but yet spoiled for business by most of the temptations which spoil a despot. History, too, seems to show that hereditary royal families gather from the repeated influence of their corrupting situation some dark taint in the blood, some transmitted and growing poison which hurts their judgments, darkens all their sorrow, and is a cloud on half their pleasure. It has been said, not truly, but with a possible approximation to truth, "That in 1802 every hereditary monarch was insane." Is it likely that this sort of monarchs will be able to catch the exact moment when, in opposition to the wishes of a triumphant ministry, they ought to dissolve Parliament? To do so with efficiency they must be able to perceive that the Parliament is wrong, and that the nation knows it is wrong. Now to know that Parliament is wrong, a man must be, if not a great statesman, yet a considerable statesman — a statesman of some sort. He must have great natural vigor, for no less will comprehend the hard principles of national policy. He must have incessant industry, for no less will keep him abreast with the involved detail to which those principles relate, and the miscellaneous occasions to which they must be applied. A man made common by nature, and made worse by life, is not likely to have either; he is nearly sure not to be BOTH clever and industrious. And a monarch in the recesses of a palace, listening to a charmed flattery, unbiased by the miscellaneous world, who has always been hedged in by rank, is likely to be but a poor judge of public opinion. He may have an inborn tact for finding it out; but his life will never teach it him, and will probably enfeeble it in him.

But there is a still worse case, a case which the life of George III. — which is a sort of museum of the defects of a constitutional king — suggest at once. The Parlia-

ment may be wiser than the people, and yet the king may be of the same mind with the people. During the last years of the American war, the Premier, Lord North, upon whom the first responsibility rested, was averse to continuing it, and knew it could not succeed. Parliament was much of the same mind; if Lord North had been able to come down to Parliament with a peace in his hand, Parliament would probably have rejoiced, and the nation, under the guidance of Parliament, though saddened by its losses, probably would have been satisfied. The opinion of that day was more like the American opinion of the present day than like our present opinion. It was much slower in its formation than our opinion now, and obeyed much more easily sudden impulses from the central administration. If Lord North had been able to throw the undivided energy and the undistracted authority of the executive government into the excellent work of making a peace and carrying a peace, years of bloodshed might have been spared, and an entail of enmity cut off that has not yet run out. But there was a power behind the Prime Minister; George III. was madly eager to continue the war, and the nation — not seeing how hopeless the strife was, not comprehending the lasting antipathy which their obstinacy was creating — ignorant, dull, and helpless — was ready to go on too. Even if Lord North had wished to make peace, and had persuaded Parliament accordingly, all his work would have been useless; a superior power could and would have appealed from a wise and pacific Parliament to a sullen and warlike nation. The check which our constitution finds for the special vices of our Parliament was misused to curb its wisdom.

The more we study the nature of cabinet government, the more we shall shrink from exposing at a vital instant its delicate machinery to a blow from a casual, incompetent, and perhaps semi-insane outsider. The preponderant probability is that on a great occasion the Premier and Parliament will really be wiser than the king. The Premier is sure to be able, and is sure to be most anxious to decide well; if he fail to decide, he loses his

place, though through all blunders the king keeps his; the judgment of the man, naturally very discerning, is sharpened by a heavy penalty, from which the judgment of the man, by nature much less intelligent, is exempt. Parliament, too, is for the most part a sound, careful, and practical body of men. Principle shows that the power of dismissing a Government with which Parliament is satisfied, and of dissolving that Parliament upon an appeal to the people, is not a power which a common hereditary monarch will in the long run be able beneficially to exercise.

Accordingly this power has almost, if not quite, dropped out of the reality of our Constitution. Nothing, perhaps, would more surprise the English people than if the Queen by a *coup d'état* and on a sudden destroyed a ministry firm in the allegiance and secure of a majority in Parliament. That power indisputably, in theory, belongs to her; but it has passed so far away from the minds of men, that it would terrify them, if she used it, like a volcanic eruption from Primrose Hill. The last analogy to it is not one to be coveted as a precedent. In 1835 William IV. dismissed an administration which, though disorganized by the loss of its leader in the Commons, was an existing Government, had a premier in the Lords ready to go on, and a leader in the Commons willing to begin. The King fancied that public opinion was leaving the Whigs and going over to the Tories, and he thought he should accelerate the transition by ejecting the former. But the event showed that he misjudged. His PERCEPTION indeed was right; the English people were wavering in their allegiance to the Whigs, who had no leader that touched the popular heart, none in whom Liberalism could personify itself and become a passion — who besides were a body long used to opposition, and therefore making blunders in office — who were borne to power by a popular impulse which they only half comprehended, and perhaps less than half shared. But the King's POLICY was wrong; he impeded the re-action instead of aiding it. He forced on a premature Tory govern-

ment, which was as unsuccessful as all wise people perceived that it must be. The popular distaste to the Whigs was as yet but incipient, inefficient; and the intervention of the Crown was advantageous to them, because it looked inconsistent with the liberties of the people. And in so far as William IV. was right in detecting an incipient change of opinion, he did but detect an erroneous change. What was desirable was the prolongation of Liberal rule. The commencing dissatisfaction did but relate to the personal demerits of the Whig leaders, and other temporary adjuncts of free principles, and not to those principles intrinsically. So that the last precedent for a royal onslaught on a ministry ended thus: in opposing the right principles, in aiding the wrong principles, in hurting the party it was meant to help. After such a warning, it is likely that our monarchs will pursue the policy which a long course of quiet precedent at present directs — they will leave a ministry trusted by Parliament to the judgment of Parliament.

Indeed, the dangers arising from a party spirit in Parliament exceeding that of the nation, and of a selfishness in Parliament contradicting the true interest of the nation, are not great dangers in a country where the mind of the nation is steadily political, and where its control over its representatives is constant. A steady opposition to a formed public opinion is hardly possible in our House of Commons, so incessant is the national attention to politics, and so keen the fear in the mind of each member that he may lose his valued seat. These dangers belong to early and scattered communities, where there are no interesting political questions, where the distances are great, where no vigilant opinion passes judgment on parliamentary excesses, where few care to have seats in the chamber, and where many of those few are from their characters and their antecedents better not there than there. The one great vice of parliamentary government in an adult political nation, is the caprice of Parliament in the choice of a ministry. A nation can hardly control it here; and it is not good that, except

within wide limits, it should control it. The parliamentary judgment of the merits or demerits of an administration very generally depends on matters which the Parliament, being close at hand, distinctly sees, and which the distant nation does not see. But where personality enters, capriciousness begins. It is easy to imagine a House of Commons which is discontented with all statesmen, which is contented with none, which is made up of little parties, which votes in small knots, which will adhere steadily to no leader, which gives every leader a chance and a hope. Such Parliaments require the imminent check of possible dissolution; but that check is (as has been shown) better in the premier than in the sovereign; and by the late practice of our Constitution, its use is yearly ebbing from the sovereign and yearly centring in the premier. The Queen can hardly now refuse a defeated minister the chance of a dissolution, any more than she can dissolve in the time of an undefeated one, and without his consent.

We shall find the case much the same with the safety-valve, as I have called it, of our Constitution. A good, capable, hereditary monarch would exercise it better than a premier, but a premier could manage it well enough; and a monarch capable of doing better will be born only once in a century, whereas monarchs likely to do worse will be born every day.

There are two modes in which the power of our executive to create Peers — to nominate, that is, additional members of our upper and revising chamber — now acts: one constant, habitual, though not adequately noticed by the popular mind as it goes on; and the other possible and terrific, scarcely ever really exercised, but always by its reserved magic maintaining a great and a restraining influence. The Crown creates Peers, a few year by year, and thus modifies continually the characteristic feeling of the House of Lords. I have heard people say, who ought to know, that the English peerage (the only one upon which unhappily the power of new creation now acts) is now more Whig than Tory. Thirty years ago the

majority was indisputably the other way. Owing to very curious circumstances English parties have not alternated in power as a good deal of speculation predicts they would, and a good deal of current language assumes they have. The Whig party were in office some seventy years (with very small breaks), from the death of Queen Anne to the coalition between Lord North and Mr. Fox; then the Tories (with only such breaks) were in power for nearly fifty years, till 1832; and since, the Whig party has always, with very trifling intervals, been predominant. Consequently, each continuously-governing party has had the means of modifying the Upper House to suit its views. The profuse Tory creations of half a century had made the House of Lords bigotedly Tory before the first Reform Act, but it is wonderfully mitigated now. The Irish Peers and the Scotch Peers — being nominated by an almost unaltered constituency, and representing the feelings of the majority of that constituency only (no minority having any voice) — present an unchangeable Tory element. But the element in which change is permitted has been changed. Whether the English Peerage be or be not predominantly now Tory, it is certainly not Tory after the fashion of the Toryism of 1832. The Whig additions have indeed sprung from a class commonly rather adjoining upon Toryism than much inclining to Radicalism. It is not from men of large wealth that a very great impetus to organic change should be expected. The additions to the Peers have matched nicely enough with the old Peers, and therefore they have effected more easily a greater and more permeating modification. The addition of a contrasting mass would have excited the old leaven, but the delicate infusion of ingredients similar in genus, though different in species, has modified the new compound without irritating the old original.

This ordinary and common use of the peer-creating power is always in the hands of the Premier, and depends for its characteristic use on being there. He, as the head of the predominant party, is the proper person

to modify gradually the permanent chamber which, perhaps, was at starting hostile to him; and, at any rate, can be best harmonized with the public opinion he represents by the additions he makes. Hardly any contrived constitution possesses a machinery for modifying its secondary house so delicate, so flexible, and so constant. If the power of creating life peers had been added, the mitigating influence of the responsible executive upon the House of Lords would have been as good as such a thing can be.

The catastrophic creation of Peers for the purpose of swamping the upper house is utterly different. If an able and impartial exterior king is at hand, this power is best in that king. It is a power only to be used on great occasions, when the object is immense, and the party strife unmitigated. This is the conclusive, the swaying power of the moment, and of course, therefore, it had better be in the hands of a power both capable and impartial, than of a premier who must in some degree be a partisan. The value of a discreet, calm, wise monarch, if such should happen to be reigning at the acute crisis of a nation's destiny, is priceless. He may prevent years of tumult, save bloodshed and civil war, lay up a store of grateful fame to himself, prevent the accumulated intestine hatred of each party to its opposite. But the question comes back, will there be such a monarch just then? What is the chance of having him just then? What will be the use of the monarch whom the accidents of inheritance, such as we know them to be, must upon an average bring us just then?

The answer to these questions is not satisfactory, if we take it from the little experience we have had in this rare matter. There have been but two cases at all approaching to a catastrophic creation of Peers—to a creation which would suddenly change the majority of the Lords—in English history. One was in Queen Anne's time. The majority of Peers in Queen Anne's time were Whig, and by profuse and quick creations Harley's Ministry changed it to a Tory majority. So

great was the popular effect, that in the next reign one of the most contested ministerial proposals was a proposal to take the power of indefinite peer creation from the Crown, and to make the number of Lord's fixed, as that of the Commons is fixed. But the sovereign had little to do with the matter. Queen Anne was one of the smallest people ever set in a great place. Swift bitterly and justly said "she had not a store of amity by her for more than one friend at a time," and just then her affection was concentrated on a waiting-maid. Her waiting-maid told her to make Peers, and she made them. But of large thought and comprehensive statesmanship she was as destitute as Mrs. Masham. She supported a bad ministry by the most extreme of measures, and she did it on caprice. The case of William IV. is still more instructive. He was a very conscientious king, but at the same time an exceedingly weak king. His correspondence with Lord Grey on this subject fills more than half a large volume, or rather his secretary's correspondence, for he kept a very clever man to write what he thought, or at least what those about him thought. It is a strange instance of high-placed weakness and conscientious vacillation. After endlesss letters the king consents to make a REASONABLE number of Peers if required to pass the second reading of the Reform Bill, but owing to desertion of the "Waverers" from the Tories, the second reading is carried without it by nine, and then the king refuses to make Peers, or at least enough Peers when a vital amendment is carried by Lord Lyndhurst, which would have destroyed, and was meant to destroy the Bill. In consequence, there was a tremendous crisis, and nearly a revolution. A more striking example of well-meaning imbecility is scarcely to be found in history. No one who reads it carefully will doubt that the discretionary power of making Peers would have been far better in Lord Grey's hands than in the king's. It was the uncertainty whether the king would exercise it, and how far he would exercise it, that mainly animated the opposition. In fact, you may place power in weak

hands at a revolution, but you cannot keep it in weak hands. It runs out of them into strong ones. An ordinary hereditary sovereign — a William IV., or a George IV. — is unfit to exercise the peer-creating power when most wanted. A half-insane king, like George III., would be worse. He might use it by unaccountable impulse when not required, and refuse to use it out of sullen madness when required.

The existence of a fancied check on the premier is in truth an evil, because it prevents the enforcement of a real check. It would be easy to provide by law that an extraordinary number of Peers — say more than ten annually — should not be created except on a vote of some large majority, suppose three-fourths of the lower house. This would ensure that the premier should not use the reserve force of the Constitution as if it were an ordinary force; that he should not use it except when the whole nation fixedly wished it; that it should be kept for a revolution, not expended on administration: and it would ensure that he should then have it to use. Queen Anne's case and William IV.'s case prove that neither object is certainly attained by entrusting this critical and extreme force to the chance idiosyncracies and habitual mediocrity of an hereditary sovereign.

It may be asked why I argue at such length a question in appearance so removed from practice, and in one point of view so irrelevant to my subject. No one proposes to remove Queen Victoria; if any one is in a safe place on earth, she is in a safe place. In these very essays it has been shown that the mass of our people would obey no one else, that the reverence she excites is the potential energy — as science now speaks — out of which all minor forces are made, and from which lesser functions take their efficiency. But looking not to the present hour, and this single country, but to the world at large and coming times, no question can be more practical.

What grows upon the world is a certain matter-of-factness. The test of each century, more than of the

century before, is the test of results. New countries are arising all over the world where there are no fixed sources of reverence; which have to make them; which have to create institutions which must generate loyalty by conspicuous utility. This matter-of-factness is the growth even in Europe of the two greatest and newest intellectual agencies of our time. One of these is business. We see so much of the material fruits of commerce, that we forget its mental fruits. It begets a mind desirous of things, careless of ideas, not acquainted with the niceties of words. In all labor there should be profit, is its motto. It is not only true that we have "left swords for ledgers," but war itself is made as much by the ledger as by the sword. The soldier — that is, the great soldier — of to-day is not a romantic animal, dashing at forlorn hopes, animated by frantic sentiment, full of fancies as to a lady-love or a sovereign; but a quiet, grave man, busied in charts, exact in sums, master of the art of tactics, occupied in trivial detail; thinking, as the Duke of Wellington was said to do, MOST of the shoes of his soldiers; despising all manner of *éclat* and eloquence; perhaps, like Count Moltke, "silent in seven languages." We have reached a "climate" of opinion where figures rule, where our very supporter of Divine Right, as we deemed him, our Count Bismarck, amputates kings right and left, applies the test of results to each, and lets none live who are not to do something. There has in truth been a great change during the last five hundred years in the predominant occupations of the ruling part of mankind; formerly they passed their time either in exciting action or inanimate repose. A feudal baron had nothing between war and the chase — keenly animating things both — and what was called "inglorious ease." Modern life is scanty in excitements, but incessant in quiet action. Its perpetual commerce is creating a "stock-taking" habit — the habit of asking each man, thing, and institution, "Well, what have you done since I saw you last?"

Our physical science, which is becoming the dominant culture of thousands, and which is beginning to permeate

our common literature to an extent which few watch enough, quite tends the same way. The two peculiarities are its homeliness and its inquisitiveness: its value for the most "stupid" facts, as one used to call them, and its incessant wish for verification — to be sure, by tiresome seeing and hearing, that they are facts. The old excitement of thought has half died out, or rather it is diffused in quiet pleasure over a life, instead of being concentrated in intense and eager spasms. An old philosopher — a Descartes, suppose — fancied that out of primitive truths, which he could by ardent excogitation know, he might by pure deduction evolve the entire universe. Intense self-examination, and intense reason would, he thought, make out everything. The soul "itself by itself," could tell all it wanted if it would be true to its sublimer isolation. The greatest enjoyment possible to man was that which this philosophy promises its votaries — the pleasure of being always right, and always reasoning — without ever being bound to look at anything. But our most ambitious schemes of philosophy now start quite differently. Mr. Darwin begins:—

"When on board H. M. S. Beagle, as naturalist, I was much struck with certain facts in the distribution of the organic beings inhabiting South America, and in the geological relations of the present to the past inhabitants of that continent. These facts, as will be seen in the latter chapters of this volume, seemed to throw some light on the origin of species — that mystery of mysteries, as it has been called by one of our greatest philosophers. On my return home, it occured to me, in 1837, that something might perhaps be made out on this question by patiently accumulating and reflecting on all sorts of facts which could possibly have any bearing on it. After five years' work I allowed myself to speculate on the subject, and drew up some short notes; these I enlarged in 1844 into a sketch of the conclusions which then seemed to me probable: from that period to the present day I have steadily pursued the same object. I hope that I may be excused for entering on these personal details,

as I give them to show that I have not been hasty in coming to a decision."

If he hopes finally to solve his great problem, it is by careful experiments in pigeon fancying, and other sorts of artificial variety making. His hero is not a self-inclosed, excited philosopher, but "that most skillful breeder, Sir John Sebright, who used to say, with respect to pigeons, that he would produce any given feathers in three years, but it would take him six years to obtain a head and a beak." I am not saying that the new thought is better than the old; it is no business of mine to say anything about that; I only wish to bring home to the mind, as nothing but instances can bring it home, how matter-of-fact, how petty, as it would at first sight look, even our most ambitious science has become.

In the new communities which our emigrating habit now constantly creates, this prosaic turn of mind is intensified. In the American mind and in the colonial mind there is, as contrasted with the old English mind, a LITERALNESS, a tendency to say, "The facts are so-and-so, whatever may be thought or fancied about them." We used before the Civil War to say that the Americans worshipped the almighty dollar; we now know that they can scatter money almost recklessly when they will. But what we meant was half right — they worship visible value; obvious, undeniable, intrusive result. And in Australia and New Zealand the same turn comes uppermost. It grows from the struggle with the wilderness. Physical difficulty is the enemy of early communities, and an incessant conflict with it for generations leaves a mark of reality on the mind — a painful mark almost to us, used to impalpable fears and the half-fanciful dangers of an old and complicated society. The "new Englands" of all latitudes are bare-minded (if I may so say) as compared with the "old."

When, therefore, the new communities of the colonized world have to choose a government, they must choose one in which ALL the institutions are of an obvious evident utility. We catch the Americans smiling at our

Queen with her secret mystery, and our Prince of Wales with his happy inaction. It is impossible, in fact, to convince their prosaic minds that constitutional royalty is a rational government, that it is suited to a new age and an unbroken country, that those who start afresh can start with it. The princelings who run about the world with excellent intentions, but an entire ignorance of business, are to them a locomotive advertisement that this sort of government is European in its limitations and mediæval in its origin; that though it has yet a great part to play in the old States, it has no place or part in new States. The *réalisme impitoyable* which good critics find in a most characteristic part of the literature of the nineteenth century, is to be found also in its politics. An ostentatious utility must characterize its creations.

The deepest interest, therefore, attaches to the problem of this essay. If hereditary royalty had been essential to parliamentary government, we might well have despaired of that government. But accurate investigation shows that this royalty is not essential; that upon an average, it is not even in a high degree useful; that though a king with high courage and fine discretion, a king with a genius for the place, is always useful, and at rare moments priceless, yet that a common king, a king such as birth brings, is of no use at difficult crises, while in the common course of things his aid is neither likely nor required — he will do nothing, and he need do nothing. But we happily find that a new country need not fall back into the fatal division of powers incidental to a presidential government; it may, if other conditions serve, obtain the ready, well-placed, identical sort of sovereignty which belongs to the English Constitution, under the unroyal form of parliamentary government.

VIII.

THE PRE-REQUISITES OF CABINET GOVERNMENT, AND THE PECULIAR FORM WHICH THEY HAVE ASSUMED IN ENGLAND.

Cabinet Government is rare because its pre-requisites are many. It requires the co-existence of several national characteristics which are not often found together in the world, and which should be perceived more distinctly than they often are. It is fancied that the possession of a certain intelligence, and a few simple virtues, are the sole requisites. These mental and moral qualities are necessary, but much else is necessary also. A cabinet government is the government of a committee elected by the legislature, and there are therefore a double set of conditions to it: first, those which are essential to all elective governments as such; and second, those which are requisite to this particular elective government. There are pre-requisites for the genus, and additional ones for the species.

The first pre-requisite of elective government is the mutual confidence of the electors. We are so accustomed to submit to be ruled by elected ministers, that we are apt to fancy all mankind would readily be so too. Knowledge and civilization have at least made this progress that we instinctively, without argument, almost without consciousness, allow a certain number of specified persons to choose our rulers for us. It seems to us the simplest thing in the world. But it is one of the gravest things.

The peculiar marks of semi-barbarous people are diffused distrust and indiscriminate suspicion. People, in all but the most favored times and places, are rooted to the places where they were born, think the thoughts of

those places, can endure no other thoughts. The next parish even is suspected. Its inhabitants have different usages, almost imperceptibly different, but yet different; they speak a varying accent; they use a few peculiar words; tradition says that their faith is dubious. And if the next parish is a little suspected, the next county is much more suspected. Here is a definite beginning of new maxims, new thoughts, new ways: the immemorial boundary mark begins in feeling a strange world. And if the next county is dubious, a remote county is untrustworthy. "Vagrants come from thence" men know, and they know nothing else. The inhabitants of the North speak a dialect different from the dialect of the South: they have other laws, another aristocracy, another life. In ages when distant territories are blanks in the mind, when neighborhood is a sentiment, when locality is a passion, concerted co-operation between remote regions is impossible even on trivial matters. Neither would rely enough upon the good faith, good sense, and good judgment of the other. Neither could enough calculate on the other.

And if such co-operation is not to be expected in trivial matters, it is not to be thought of in the most vital matter of government — the choice of the executive ruler. To fancy that Northumberland in the thirteenth century would have consented to ally itself with Somersetshire for the choice of a chief magistrate is absurd; it would scarcely have allied itself to choose a hangman. Even now, if it were palpably explained, neither district would like it. But no one says at a county election, "The object of this present meeting is to choose our delegate to what the Americans call the 'Electoral College,' to the assembly which names our first magistrate — our substitute for their president. Representatives from this county will meet representatives from other counties, from cities and boroughs, and proceed to choose our rulers." Such bald exposition would have been impossible in old times; it would be considered queer, eccentric, if it were used now. Happily, the process of election is so indirect and

hidden, and the introduction of that process was so gradual and latent, that we scarcely perceive the immense political trust we repose in each other. The best mercantile credit seems to those who give it, natural, simple, obvious; they do not argue about it, or think about it. The best political credit is analogous; we trust our countrymen without remembering that we trust them.

A second and very rare condition of an elective government is a CALM national mind — a tone of mind sufficiently stable to bear the necessary excitement of conspicuous revolutions. No barbarous, no semi-civilized nation has ever possessed this. The mass of uneducated men could not now in England be told "go to, choose your rulers"; they would go wild; their imaginations would fancy unreal dangers, and the attempt at election would issue in some forcible usurpation. The incalculable advantage of august institutions in a free State is, that they prevent this collapse. The excitement of choosing our rulers is prevented by the apparent existence of an unchosen ruler. The poorer and more ignorant classes — those who would most feel excitement, who would most be misled by excitement — really believe that the Queen governs. You could not explain to them the recondite difference between "reigning" and "governing"; the words necessary to express it do not exist in their dialect; the ideas necessary to comprehend it do not exist in their minds. The separation of principal power from principal station is a refinement which they could not even conceive. They fancy they are governed by an hereditary queen, a queen by the grâce of God, when they are really governed by a cabinet and a parliament — men like themselves, chosen by themselves. The conspicuous dignity awakens the sentiment of reverence, and men, often very undignified, seize the occasion to govern by means of it.

Lastly, the third condition of all elective government is what I may call RATIONALITY, by which I mean a power involving intelligence, but yet distinct from it. A whole people electing its rulers must be able to form a

distinct conception of distant objects. Mostly, the "divinity" that surrounds a king altogether prevents anything like a steady conception of him. You fancy that the object of your loyalty is as much elevated above you by intrinsic nature as he is by extrinsic position; you deify him in sentiment, as once men deified him in doctrine. This illusion has been and still is of incalculable benefit to the human race. It prevents, indeed, men from choosing their rulers; you cannot invest with that loyal illusion a man who was yesterday what you are, who to-morrow may be so again, whom you chose to be what he is. But though this superstition prevents the election of rulers, it renders possible the existence of unelected rulers. Untaught people fancy that their king, crowned with the holy crown, anointed with the oil of Rheims, descended of the House of Plantagenet, is a different sort of being from any one not descended of the Royal House — not crowned — not anointed. They believe that there is ONE man whom by mystic right they should obey: and therefore they do obey him. It is only in later times, when the world is wider, its experience larger, and its thought colder, that the plain rule of a palpably chosen ruler is even possible.

These conditions narrowly restrict elective government. But the pre-requisites of a cabinet government are rarer still; it demands not only the conditions I have mentioned, but the possibility likewise of a good legislature — a legislature competent to elect a sufficient administration.

Now a competent legislature is very rare. ANY permanent legislature at all, any constantly acting mechanism for enacting and repealing laws, is, though it seems to us so natural, quite contrary to the inveterate conceptions of mankind. The great majority of nations conceive of their law, either as something Divinely given and therefore unalterable, or as a fundamental habit, inherited from the past to be transmitted to the future. The English Parliament, of which the prominent functions are now legislative, was not all so once. It was rather a PRESERVATIVE body. The custom of the realm —

the aboriginal transmitted law — the law which was in the breast of the judges, could not be altered without the consent of parliament, and therefore everybody felt sure it would not be altered except in grave, peculiar, and anomalous cases. The VALUED use of parliament was not half so much to alter the laws as to prevent the laws being altered. And such too was its real use. In early societies it matters much more that the law should be fixed than that it should be good. Any law which the people of ignorant times enact is sure to involve many misconceptions and to cause many evils. Perfection in legislation is not to be looked for, and is not, indeed, much wanted in a rude, painful, confined life. But such an age covets fixity. That men should enjoy the fruits of their labor, that the law of property should be known, that the law of marriage should be known, that the whole course of life should be kept in a calculable track, is the *summum bonum* of early ages, the first desire of semi-civilized mankind. In that age men do not want to have their laws adapted, but to have their laws steady. The passions are so powerful, force so eager, the social bond so weak, that the august spectacle of an all but unalterable law is necessary to preserve society. In the early stages of human society all change is thought an evil. And MOST change is an evil. The conditions of life are so simple and so unvarying that any decent sort of rules suffice, so long as men know what they are. Custom is the first check on tyranny; that fixed routine of social life at which modern innovations chafe, and by which modern improvement is impeded, is the primitive check on base power. The perception of political expediency has then hardly begun; the sense of abstract justice is weak and vague; and a rigid adherence to the fixed mold of transmitted usage is essential to an unmarred, unspoiled, unbroken life.

In such an age a legislature continuously sitting, always making laws, always repealing laws, would have been both an anomaly and a nuisance. But in the present

state of the civilized part of the world such difficulties are obsolete. There is a diffused desire in civilized communities for an ADJUSTING legislation; for a legislation which should adapt the inherited laws to the new wants of a world which now changes every day. It has ceased to be necessary to maintain bad laws, because it is necessary to have some laws. Civilization is robust enough to bear the incision of legal improvements. But taking history at large, the rarity of cabinets is mostly due to the greater rarity of continuous legislatures.

Other conditions, however, limit even at the present day the area of a cabinet government. It must be possible to have not only a legislature, but to have a competent legislature — a legislature willing to elect and willing to maintain an efficient executive. And this is no easy matter. It is indeed true that we need not trouble ourselves to look for that elaborate and complicated organization which partially exists in the House of Commons, and which is more fully and freely expanded in plans for improving the House of Commons. We are not now concerned with perfection or excellence; we seek only for simple fitness and bare competency.

The conditions of fitness are two. First, you must get a good legislature; and next, you must keep it good. And these are by no means so nearly connected as might be thought at first sight. To keep a legislature efficient, it must have a sufficient supply of substantial business. If you employ the best set of men to do nearly nothing, they will quarrel with each other about that nothing. Where great questions end, little parties begin. And a very happy community, with few new laws to make, few old bad laws to repeal, and but simple foreign relations to adjust, has great difficulty in employing a legislature. There is nothing for it to enact, and nothing for it to settle. Accordingly, there is great danger that the legislature, being debarred from all other kind of business, may take to quarreling about its elective business; that controversies as to ministries may occupy all its time, and yet that time be perniciously employed; that a constant

succession of feeble administrations, unable to govern and unfit to govern, may be substituted for the proper result of cabinet government, a sufficient body of men long enough in power to evince their sufficiency. The exact amount of non-elective business necessary for a Parliament which is to elect the executive cannot, of course, be formally stated. There are no numbers and no statistics in the theory of constitutions. All we can say is, that a Parliament with little business, which is to be as efficient as a Parliament with much business, must be in all other respects much better. An indifferent Parliament may be much improved by the steadying effect of grave affairs; but a Parliament which has no such affairs must be intrinsically excellent, or it will fail utterly.

But the difficulty of keeping a good legislature, is evidently secondary to the difficulty of first getting it. There are two kinds of nations which can elect a good Parliament. The first is a nation in which the mass of the people are intelligent, and in which they are comfortable. Where there is no honest poverty, where education is diffused, and political intelligence is common, it is easy for the mass of the people to elect a fair legislature. The ideal is roughly realized in the North American colonies of England, and in the whole free States of the Union. In these countries there is no such thing as honest poverty; physical comfort, such as the poor cannot imagine here, is there easily attainable by healthy industry. Education is diffused much, and is fast spreading. Ignorant emigrants from the Old World often prize the intellectual advantages of which they are themselves destitute, and are annoyed at their inferiority in a place where rudimentary culture is so common. The greatest difficulty of such new communities is commonly geographical. The population is mostly scattered; and where population is sparse, discussion is difficult. But in a country very large, as we reckon in Europe, a people really intelligent, really educated, really comfortable, would soon form a good opinion. No one can doubt that the New England States, if they were a separate com-

munity, would have an education, a political capacity, and an intelligence such as the numerical majority of no people, equally numerous, has ever possessed. In a state of this sort, where all the community is fit to choose a sufficient legislature, it is possible, it is almost easy, to create that legislature. If the New England States possessed a cabinet government as a separate nation, they would be as renowned in the world for political sagacity as they are now for diffused happiness.

The structure of these communities is indeed based on the principle of equality, and it is impossible that ANY such community can wholly satisfy the severe requirements of a political theorist. In every old community its primitive and guiding assumption is at war with truth. By its theory all people are entitled to the same political power, and they can only be so entitled on the ground that in politics they are equally wise. But at the outset of an agricultural colony this postulate is as near the truth as politics want. There are in such communities no large properties, no great capitals, no refined classes — every one is comfortable and homely, and no one is at all more. Equality is not artificially established in a new colony; it establishes itself. There is a story that among the first settlers in Western Australia, some, who were rich, took out laborers at their own expense, and also carriages to ride in. But soon they had to try if they could live in the carriages. Before the masters' houses were built, the laborers had gone off — they were building houses and cultivating land for themselves, and the masters were left to sit in their carriages. Whether this exact thing happened I do not know, but this sort of thing has happened a thousand times. There have been a whole series of attempts to transplant to the colonies a graduated English society. But they have always failed at the first step. The rude classes at the bottom felt that they were equal to or better than the delicate classes at the top; they shifted for themselves, and left the "gentlefolks" to shift for themselves; the base of the elaborate pyramid spread abroad, and the apex tumbled in and

perished. In the early ages of an agricultural colony, whether you have political democracy or not, social democracy you must have, for nature makes it, and not you. But in time, wealth grows and inequality begins. A and his children are industrious, and prosper; B and his children are idle, and fail. If manufactures on a considerable scale are established — and most young communities strive even by protection to establish them — the tendency to inequality is intensified. The capitalist becomes a unit with much, and his laborers a crowd with little. After generations of education, too, there arise varieties of culture — there will be an upper thousand, or ten thousand, of highly cultivated people in the midst of a great nation of moderately educated people. In theory it is desirable that this highest class of wealth and leisure should have an influence far out of proportion to its mere number: a perfect constitution would find for it a delicate expedient to make its fine thought tell upon the surrounding cruder thought. But as the world goes, when the whole of the population is as instructed and as intelligent as in the case I am supposing, we need not care much about this. Great communities have scarcely ever — never save for transient moments — been ruled by their highest thought. And if we can get them ruled by a decent, capable thought, we may be well enough contented with our work. We have done more than could be expected, though not all which could be desired. At any rate, an isocratic polity — a polity where every one votes, and where every one votes alike — is, in a community of sound education and diffused intelligence, a conceivable case of cabinet government. It satisfies the essential condition; there is a people able to elect, a parliament able to choose.

But suppose the mass of the people are not able to elect — and this is the case with the numerical majority of all but the rarest nations — how is a cabinet government to be then possible? It is only possible in what I may venture to call DEFERENTIAL nations. It has been thought strange, but there ARE nations in which the numerous unwiser part wishes to be ruled by the less

numerous wiser part. The numerical majority — whether by custom or by choice, is immaterial — is ready, is eager to delegate its power of choosing its ruler to a certain select minority. It abdicates in favor of its *élite*, and consents to obey whoever that *élite* may confide in. It acknowledges as its secondary electors — as the choosers of its government — an educated minority, at once competent and unresisted; it has a kind of loyalty to some superior persons who are fit to choose a good government, and whom no other class opposes. A nation in such a happy state as this has obvious advantages for constructing a cabinet government. It has the best people to elect a legislature, and therefore it may fairly be expected to choose a good legislature — a legislature competent to select a good administration.

England is the type of deferential countries, and the manner in which it is so, and has become so, is extremely curious. The middle classes — the ordinary majority of educated men — are in the present day the despotic power in England. "Public opinion," now-a-days, "is the opinion of the bald-headed man at the back of the omnibus." It is NOT the opinion of the aristocratical classes as such; or of the most educated or refined classes as such: it is simply the opinion of the ordinary mass of educated, but still commonplace mankind. If you look at the mass of the constituencies, you will see that they are not very interesting people; and perhaps if you look behind the scenes and see the people who manipulate and work the constituencies, you will find that these are yet more uninteresting. The English Constitution in its palpable form is this — the mass of the people yield obedience to a select few; and when you see this select few, you perceive that though not of the lowest class, nor of an unrespectable class, they are yet of a heavy sensible class — the last people in the world to whom, if they were drawn up in a row, an immense nation would ever give an exclusive preference.

In fact, the mass of the English people yield a deference rather to something else than to their rulers. They

defer to what we may call the THEATRICAL SHOW of society. A certain state passes before them; a certain pomp of great men; a certain spectacle of beautiful women; a wonderful scene of wealth and enjoyment is displayed, and they are coerced by it. Their imagination is bowed down; they feel they are not equal to the life which is revealed to them. Courts and aristocracies have the great quality which rules the multitude, though philosophers can see nothing in it — visibility. Courtiers can do what others cannot. A common man may as well try to rival the actors on the stage in their acting, as the aristocracy in THEIR acting. The higher world, as it looks from without, is a stage on which the actors walk their parts much better than the spectators can. This play is played in every district. Every rustic feels that his house is not like my lord's house; his life like my lord's life; his wife like my lady. The climax of the play is the Queen: nobody supposes that their house is like the court; their life like her life; her orders like their orders. There is in England a certain charmed spectacle which imposes on the many, and guides their fancies as it will. As a rustic on coming to London finds himself in presence of a great show and vast exhibition of inconceivable mechanical things, so by the structure of our society he finds himself face to face with a great exhibition of political things which he could not have imagined, which he could not make — to which he feels in himself scarcely anything analogous.

Philosophers may deride this superstition, but its results are inestimable. By the spectacle of this august society, countless ignorant men and women are induced to obey the few nominal electors — the £10 borough renters, and the £50 county renters — who have nothing imposing about them, nothing which would attract the eye or fascinate the fancy. What impresses men is not mind, but the result of mind. And the greatest of these results is this wonderful spectacle of society, which is ever new, and yet ever the same; in which accidents pass and essence remains; in which one generation dies and another succeeds, as if they were birds in a cage, or

animals in a menagerie; of which it seems almost more than a metaphor to treat the parts as limbs of a perpetual living thing, so silently do they seem to change, so wonderfully and so perfectly does the conspicuous life of the new year take the place of the conspicuous life of last year. The apparent rulers of the English nation are like the most imposing personages of a splendid procession: it is by them the mob are influenced; it is they whom the spectators cheer. The real rulers are secreted in second-rate carriages; no one cares for them or asks about them, but they are obeyed implicitly and unconsciously by reason of the splendor of those who eclipsed and proceeded them.

It is quite true that this imaginative sentiment is supported by a sensation of political satisfaction. It cannot be said that the mass of the English people are well off. There are whole classes who have not a conception of what the higher orders call comfort; who have not the prerequisites of moral existence; who cannot lead the life that becomes a man. But the most miserable of these classes do not impute their misery to politics. If a political agitator were to lecture to the peasants of Dorsetshire, and try to excite political dissatisfaction, it is much more likely that he would be pelted than that he would succeed. Of Parliament these miserable creatures know scarcely anything; of the cabinet they never heard. But they would say that, "for all they have heard, the Queen is very good"; and rebelling against the structure of society is to their minds rebelling against the Queen, who rules that society, in whom all its most impressive part —the part that they know—culminates. The mass of the English people are politically contented as well as politically deferential.

A deferential community, even though its lowest classes are not intelligent, is far more suited to a cabinet government than any kind of democratic country, because it is more suited to political excellence. The highest classes can rule in it; and the highest classes must, as such, have more political ability than the lower classes.

A life of labor, an incomplete education, a monotonous occupation, a career in which the hands are used much and the judgment is used little, cannot create as much flexible thought, as much applicable intelligence, as a life of leisure, a long culture, a varied experience, an existence by which the judgment is incessantly exercised, and by which it may be incessantly improved. A country of respectful poor, though far less happy than where there are no poor to be respectful, is nevertheless far more fitted for the best government. You can use the best classes of the respectful country; you can only use the worst where every man thinks he is as good as every other.

It is evident that no difficulty can be greater than that of founding a deferential nation. Respect is traditional; it is given not to what is proved to be good, but to what is known to be old. Certain classes in certain nations retain by common acceptance a marked political preference, because they have always possessed it, and because they inherit a sort of pomp which seems to make them worthy of it. But in a new colony, in a community where merit MAY be equal, and where there CANNOT be traditional marks of merit and fitness, it is obvious that a political deference can be yielded to higher culture, only upon proof, first of its existence and next of its political value. But it is nearly impossible to give such a proof so as to satisfy persons of less culture. In a future and better age of the world it may be effected; but in this age the requisite premises scarcely exist; if the discussion be effectually open, if the debate be fairly begun, it is hardly possible to obtain a rational, an argumentative acquiescence in the rule of the cultivated few. As yet the few rule by their hold, not over the reason of the multitude, but over their imaginations, and their habits; over their fancies as to distant things they do not know at all, over their customs as to near things which they know very well.

A deferential community in which the bulk of the people are ignorant, is therefore in a state of what is

called in mechanics unstable equilibrium. If the equilibrium is once disturbed there is no tendency to return to it, but rather to depart from it. A cone balanced on its point is in unstable equilibrium, for if you push it ever so little it will depart farther and farther from its position and fall to the earth. So in communities where the masses are ignorant but respectful, if you once permit the ignorant class to begin to rule you may bid farewell to deference for ever. Their demagogues will inculcate, their newspapers will recount, that the rule of the existing dynasty (the people) is better than the rule of the fallen dynasty (the aristocracy). A people very rarely hears two sides of a subject in which it is much interested; the popular organs take up the side which is acceptable, and none but the popular organs in fact reach the people. A people NEVER hears censure of itself. No one will tell it that the educated minority whom it dethroned governed better or more wisely than it governs. A democracy will never, save after an awful catastrophe, return what has once been conceded to it, for to do so would be to admit an inferiority in itself, of which, except by some almost unbearable misfortune, it could never be convinced.

IX.

ITS HISTORY, AND THE EFFECTS OF THAT HISTORY — CONCLUSION.

A VOLUME might seem wanted to say anything worth saying on the History of the English Constitution, and a great and new volume might still be written on it, if a competent writer took it in hand. The subject has never been treated by any one combining the lights of the newest research and the lights of the most matured philosophy. Since the masterly book of Hallam was written, both political thought and historical knowledge have gained much, and we might have a treatise applying our strengthened calculus to our augmented facts. I do not pretend that I could write such a book, but there are a few salient particulars which may be fitly brought together, both because of their past interest and of their present importance.

There is a certain common polity, or germ of polity, which we find in all the rude nations that have attained civilization. These nations seem to begin in what I may call a consultative and tentative absolutism. The king of early days, in vigorous nations, was not absolute as despots now are; there was then no standing army to repress rebellion, no organized *espionage* to spy out discontent, no skilled bureaucracy to smooth the ruts of obedient life. The early king was indeed consecrated by a religious sanction; he was essentially a man apart, a man above others, divinely annointed, or even God-begotten. But in nations capable of freedom this religious domination was never despotic. There was indeed no legal limit: the very words could not be translated into the dialect of those times. The notion of law as we have it — of a rule imposed by human authority, capable of being

altered by that authority when it likes, and in fact, so altered habitually — could not be conveyed to early nations, who regarded law half as an invincible prescription, and half as a Divine revelation. Law "came out of the king's mouth"; he gave it as Solomon gave judgment,—embedded in the particular case, and upon the authority of Heaven as well as his own. A Divine limit to the Divine revealer was impossible, and there was no other source of law. But though there was no legal limit, there was a practical limit to subjection in (what may be called) the pagan part of human nature, —the inseparable obstinacy of freemen. They NEVER would do exactly what they were told.

To early royalty, as Homer describes it in Greece and as we may well imagine it elsewhere, there were always two adjuncts: one, the "old men," the men of weight, the council, the *βουλή*, of which the king asked advice, from the debates in which the king tried to learn what he could do and what he ought to do. Besides this there was the *ἀγορά*, the purely listening assembly, as some have called it, but the TENTATIVE assembly, as I think it might best be called. The king came down to his assembled people in form to announce his will, but in reality, speaking in very modern words, to "feel his way." He was sacred, no doubt; and popular, very likely; still he was half like a popular premier speaking to a high-spirited chamber; there were limits to his authority and power — limits which he would discover by trying whether eager cheers received his mandate, or only hollow murmurs and a thinking silence.

This polity is a good one for its era and its place, but there is a fatal defect in it. The reverential associations upon which the government is built are transmitted according to one law, and the capacity needful to work the government is transmitted according to another law. The popular homage clings to the line of god-descended kings; it is transmitted by inheritance. But very soon that line comes to a child or an idiot, or one by some defect or other incapable. Then we find everywhere the

truth of the old saying, that liberty thrives under weak princes; then the listening assembly begins not only to murmur, but to speak; then the grave council begins not so much to suggest as to inculcate, not so much to advise as to enjoin.

Mr. Grote has told at length how out of these appendages of the original kingdom the free States of Greece derived their origin, and how they gradually grew — the oligarchical States expanding the council, and the democratical expanding the assembly. The history has as many varieties in detail as there were Greek cities, but the essence is the same everywhere. The political characteristic of the early Greeks, and of the early Romans, too, is that out of the *tentacula* of a monarchy they developed the organs of a republic.

English history has been in substance the same, though its form is different, and its growth far slower and longer. The scale was larger, and the elements more various. A Greek city soon got rid of its kings, for the political sacredness of the monarch would not bear the daily inspection and constant criticism of an eager and talking multitude. Everywhere in Greece the slave population — the most ignorant, and therefore the most unsusceptible of intellectual influences — was struck out of the account. But England began as a kingdom of considerable size, inhabited by distinct races, none of them fit for prosaic criticism and all subject to the superstition of royalty. In early England, too, royalty was much more than a superstition. A very strong executive was needed to keep down a divided, an armed, and an impatient country; and therefore the problem of political development was delicate. A formed free government in a homogeneous nation may have a strong executive; but during the transition state, while the republic is in course of development and the monarchy in course of decay, the executive is of necessity weak. The polity is divided, and its action feeble and failing. The different orders of English people have progressed, too, at different rates. The change in the state of the

higher classes since the Middle Ages is enormous, and it is all improvement; but the lower have varied little, and many argue that in some important respects they have got worse, even if in others they have got better. The development of the English Constitution was of necessity slow, because a quick one would have destroyed the executive and killed the State, and because the most numerous classes who changed very little, were not prepared for any catastrophic change in our institutions.

I cannot presume to speak of the time before the conquest, and the exact nature even of all Anglo-Norman institutions is perhaps dubious: at least, in nearly all cases there have been many controversies. Political zeal, whether Whig or Tory, has wanted to find a model in the past; and the whole state of society being confused, the precedents altering with the caprice of men and the chance of events, ingenious advocacy has had a happy field. But all that I need speak of is quite plain. There was a great "council" of the realm, to which the king summoned the most considerable persons in England, the persons he most wanted to advise him, and the persons whose tempers he was most anxious to ascertain. Exactly who came to it at first is obscure and unimportant. I need not distinguish between the "*magnum concilium* in Parliament" and the "*magnum concilium* out of Parliament." Gradually the principal assemblies summoned by the English sovereign took the precise and definite form of Lords and Commons, as in their outside we now see them. But their real nature was very different. The Parliament of to-day is a ruling body; the mediæval Parliament was, if I may so say, an EXPRESSIVE body. Its function was to tell the executive — the king — what the nation wished he should do; to some extent, to guide him by new wisdom, and, to a very great extent, to guide him by new facts. These facts were their own feelings, which were the feelings of the people, because they were part and parcel of the people. From thence the king learned, or had the means to learn, what the nation would endure, and what it would not

endure; what he might do, and what he might not do. If he much mistook this, there was a rebellion.

There are, as is well known, three great periods in the English Constitution. The first of these is the ante-Tudor period. The English Parliament then seemed to be gaining extraordinary strength and power. The title to the crown was uncertain; some monarchs were imbecile. Many ambitious men wanted to "take the people into partnership." Certain precedents of that time were cited with grave authority centuries after, when the time of freedom had really arrived. But the causes of this rapid growth soon produced an even more sudden decline. Confusion fostered it and confusion destroyed it. The structure of society then was feudal; the towns were only an adjunct and a make-weight. The principal popular force was an aristocratic force, acting with the co-operation of the gentry and yeomanry, and resting on the loyal fealty of sworn retainers. The head of this force, on whom its efficiency depended, was the high nobility. But the high nobility killed itself out. The great barons who adhered to the "Red Rose" or the "White Rose," or who fluctuated from one to the other, became poorer, fewer, and less potent every year. When the great struggle ended at Bosworth, a large part of the greatest combatants were gone. The restless, aspiring, rich barons, who made the civil war, were broken by it. Henry VII. attained a kingdom in which there was a Parliament to advise, but scarcely a Parliament to control.

The consultative government of the ante-Tudor period had little resemblance to some of the modern governments which French philosophers call by that name. The French Empire, I believe, calls itself so. But its assemblies are symmetrical "shams." They are elected by a universal suffrage, by the ballot, and in districts once marked out with an eye to equality, and still retaining a look of equality. But our English Parliaments were UNsymmetrical realities. They were elected anyhow; the sheriff had a considerable license in sending writs to boroughs, that is, he could in part pick its constituencies;

and in each borough there was a rush and scramble for the franchise, so that the strongest local party got it, whether few or many. But in England at that time there was a great and distinct desire to know the opinion of the nation, because there was a real and close necessity. The nation was wanted to do something — to assist the sovereign in some war, to pay some old debt, to contribute its force and aid in the critical conjuncture of the time. It would not have suited the ante-Tudor kings to have had a fictitious assembly; they would have lost their sole FEELER, their only instrument for discovering national opinion. Nor could they have manufactured such an assembly if they wished. The instrument in that behalf is the centralized executive, and there was no *préfet* by whom the opinion of a rural locality could be made to order, and adjusted to suit the wishes of the capital. Looking at the mode of election a theorist would say that these Parliaments were but "chance" collections of influential Englishmen. There would be many corrections and limitations to add to that statement if it were wanted to make it accurate, but the statement itself hits exactly the principal excellence of those parliaments. If not "chance" collections of Englishmen, they were "undesigned" collections; no administrations made them or could make them. They were *bonâfide* counsellors, whose opinion might be wise or unwise, but was anyhow of paramount importance, because their co-operation was wanted for what was in hand.

Legislation as a positive power was very secondary in those old Parliaments. I believe no statute at all, as far as we know, was passed in the reign of Richard I., and all the ante-Tudor acts together would look meagre enough to a modern Parliamentary agent who had to live by them. But the negative action of Parliament upon the law was essential to its whole idea, and ran through every part of its use. That the king could not change what was then the almost sacred *datum* of the common law, without seeing whether his nation liked it or not, was an essential part of the "tentative" system. The king had

to feel his way in this exceptional, singular act, as those ages deemed original legislation, as well as in lesser acts. The legislation was his at last; he enacted after consulting his Lords and Commons; his was the sacred mouth which gave holy firmness to the enactment; but he only dared alter the rule regulating the common life of his people after consulting those people; he would not have been obeyed if he had not, by a rude age which did not fear civil war as we fear it now. Many most important enactments of that period (and the fact is most characteristic) are declaratory acts. They do not profess to enjoin by inherent authority what the law shall in future be, but to state and mark what the law is; they are declarations of immemorial custom, not precepts of new duties. Even in the "Great Charter" the notion of new enactments was secondary, it was a great mixture of old and new; it was a sort of compact defining what was doubtful in floating custom, and was re-enacted over and over again, as boundaries are perambulated once a year, and rights and claims tending to desuetude thereby made patent and cleared of new obstructions. In truth, such great "charters" were rather treaties between different orders and factions, confirming ancient rights, or what claimed to be such, than laws in our ordinary sense. They were the "deeds of arrangement" of mediæval society affirmed and reaffirmed from time to time, and the principal controversy was, of course, between the king and the nation — the king trying to see how far the nation would let him go, and the nation murmuring and recalcitrating, and seeing how many acts of administration they could prevent, and how many of its claims they could resist.

Sir James Mackintosh says that Magna Charta "converted the right of taxation into the shield of liberty," but it did nothing of the sort. The liberty existed before, and the right to be taxed was an efflorescence and instance of it, not a substratum or a cause. The necessity of consulting the great council of the realm before taxation, the principle that the declaration of griev-

ances by the Parliament was to precede the grant of supplies to the sovereign, are but conspicuous instances of the primitive doctrine of the ante-Tudor period, that the king must consult the great council of the realm before he did anything, since he always wanted help. The right of self-taxation was justly inserted in the "great treaty;" but it would have been a dead letter, save for the armed force and aristocratic organization which compelled the king to make a treaty; it was a result, not a basis — an example, not a cause.

The civil wars of many years killed out the old councils (if I might so say) · that is, destroyed three parts of the greater nobility who were its most potent members, tired the small nobility and the gentry, and overthrew the aristocratic organization on which all previous effectual resistance to the sovereign had been based.

The second period of the British Constitution begins with the accession of the House of Tudor, and goes down to 1688; it is in substance the history of the growth, development, and gradually acquired supremacy of the new great council. I have no room and no occasion to narrate again the familiar history of the many steps by which the slavish Parliament of Henry VIII. grew into the murmuring Parliament of Queen Elizabeth, the mutinous Parliament of James I., and the rebellious Parliament of Charles I. The steps were many, but the energy was one — the growth of the English middle-class, using that word in its most inclusive sense, and its animation under the influence of Protestantism. No one, I think, can doubt that Lord Macaulay is right in saying that political causes would not alone have then provoked such a resistance to the sovereign, unless propelled by religious theory. Of course the English people went to and fro from Catholicism to Protestantism, and from Protestantism to Catholicism (not to mention that the Protestantism was of several shades and sects), just as the first Tudor kings and queens wished. But that was in the pre-Puritan era. The mass of Englishmen were in an undecided state, just as Hooper tells us his father was — "Not believing in Protestantism, yet not

disinclined to it." Gradually, however, a strong Evangelic spirit (as we should now speak) and a still stronger anti-Papal spirit entered into the middle sort of Englishmen, and added to that force, fibre, and substance which they have never wanted, an ideal warmth and fervor which they have almost always wanted. Hence the saying that Cromwell founded the English Constitution. Of course, in seeming, Cromwell's work died with him; his dynasty was rejected, his republic cast aside; but the spirit which culminated in him never sank again, never ceased to be a potent, though often a latent and volcanic force in the country. Charles II. said that he would never go again on his travels for anything or anybody; and he well knew that though the men whom he met at Worcester might be dead, still the spirit which warmed them was alive and young in others.

But the Cromwellian republic and the strict Puritan creed were utterly hateful to most Englishmen. They were, if I may venture on saying so, like the "Rouge" element in France and elsewhere — the sole revolutionary force in the entire State, and were hated as such. That force could do little of itself; indeed, its bare appearance tended to frighten and alienate the moderate and dull as well as the refined and reasoning classes. Alone it was impotent against the solid clay of the English apathetic nature. But give this fiery element a body of decent-looking earth; give it an excuse for breaking out on an occasion, when the decent, the cultivated, and aristocratic classes could join with it, and they could conquer by means of it, and it could be disguised in their covering.

Such an excuse was found in 1688. James II., by incredible and pertinacious folly, irritated not only the classes which had fought AGAINST his father, but also those who had fought FOR his father. He offended the Anglican classes as well as the Puritan classes; all the Whig nobles and half the Tory nobles, as well as the dissenting bourgeois. The rule of Parliament was established by the concurrence of the usual supporters of royalty with the usual opponents of it. But the result

was long weak. Our revolution has been called the minimum of a revolution, because in law, at least, it only changed the dynasty, but exactly on that account it was the greatest shock to the common multitude, who see the dynasty but see nothing else. The support of the main aristocracy held together the bulk of the deferential classes, but it held them together imperfectly, uneasily, and unwillingly. Huge masses of crude prejudice swayed hither and thither for many years. If an able Stuart had with credible sincerity professed Protestantism, probably he might have overturned the House of Hanover. So strong was inbred reverence for hereditary right, that until the accession of George III. the English government was always subject to the unceasing attrition of a competitive sovereign.

This was the result of what I insist on tediously, but what is most necessary to insist on, for it is a cardinal particular in the whole topic. Many of the English people — the higher and more educated portion — had come to comprehend the nature of constitutional government, but the mass did not comprehend it. They looked to the sovereign as the government, and to the sovereign only. These were carried forward by the magic of the aristocracy, and principally by the influence of the great Whig families with their adjuncts. Without that aid reason or liberty would never have held them.

Though the rule of Parliament was definitely established in 1688, yet the mode of exercising that rule has since changed. At first Parliament did not know how to exercise it; the organization of parties and the appointment of cabinets by parties grew up in the manner Macaulay has described so well. Up to the latest period the sovereign was supposed, to a most mischievous extent, to interfere in the choice of the persons to be Ministers. When George III. finally became insane, in 1810, everyone believed that George IV., on assuming power as Prince Regent, would turn out Mr. Perceval's government and empower Lord Grey or Lord Grenville, the Whig leaders to form another. The Tory ministry

was carrying on a successful war — a war of existence — against Napoleon; but in the people's mind, the necessity at such an occasion for an unchanged government did not outweigh the fancy that George IV. was a Whig. And a Whig, it is true, he had been before the French Revolution, when he lived an indescribable life in St. James's Street with Mr. Fox. But Lord Grey and Lord Grenville were rigid men, and had no immoral sort of influence. What liberalism of opinion the Regent ever had was frightened out of him (as of other people) by the Reign of Terror. He felt, according to the saying of another monarch, that "he lived by being a Royalist." It soon appeared that he was most anxious to retain Mr. Perceval, and that he was most eager to quarrel with the Whig Lords. As we all know, he kept the ministry whom he found in office; but that it should have been thought he could then change them, is a significant example how exceedingly modern our notions of the despotic action of Parliament in fact are.

By the steps of the struggle thus rudely mentioned (and by others which I have no room to speak of, nor need I), the change which in the Greek cities was effected both in appearance and in fact, has been effected in England, though in reality only, and not in outside. Here, too, the appendages of a monarchy have been converted into the essence of a republic; only here, because of a more numerous heterogeneous political population, it is needful to keep the ancient show while we secretly interpolate the new reality.

This long and curious history has left its trace on almost every part of our present political condition; its effects lie at the root of many of our most important controversies; and because these effects are not rightly perceived, many of these controversies are misconceived.

One of the most curious peculiarities of the English people is its dislike of the executive government. We are not in this respect "*un vrai peuple moderne*," like the Americans. The Americans conceive of their execu-

tive as one of their appointed agents; when it intervenes in common life, it does so, they consider, in virtue of the mandate of the sovereign people, and there is no invasion or dereliction of freedom in that people interfering with itself. The French, the Swiss, and all nations who breathe the full atmosphere of the nineteenth century, think so too. The material necessities of this age require a strong executive; a nation destitute of it cannot be clean, or healthy, or vigorous like a nation possessing it. By definition, a nation calling itself free should have no jealousy of the executive, for freedom means that the nation, the political part of the nation, wields the executive. But our history has reversed the English feeling: our freedom is the result of centuries of resistance, more or less legal, or more or less illegal, more or less audacious, or more or less timid, to the executive Government. We have, accordingly, inherited the traditions of conflict, and preserve them in the fullness of victory. We look on State action, not as our own action, but as alien action; as an imposed tyranny from without, not as the consummated result of our own organized wishes. I remember at the Census of 1851 hearing a very sensible old lady say that "the liberties of England were at an end;" if Government might be thus inquisitorial, if they might ask who slept in your house, or what your age was, what, she argued, might they not ask and what might they not do?

The natural impulse of the English people is to resist authority. The introduction of effectual policemen was not liked; I know people, old people I admit, who to this day consider them an infringement of freedom, and an imitation of the *gendarmes* of France. If the original policemen had been started with the present helmets, the result might have been dubious; there might have been a cry of military tyranny, and the inbred insubordination of the English people might have prevailed over the very modern love of PERFECT peace and order. The old notion that the Government is an extrinsic agency still

rules our imaginations, though it is no longer true, and though in calm and intellectual moments we well know it is not. Nor is it merely our history which produces this effect; we might get over that; but the results of that history co-operate. Our double Government so acts: when we want to point the antipathy to the executive, we refer to the jealousy of the Crown, so deeply imbeded in the very substance of constitutional authority; so many people are loath to admit the Queen, in spite of law and fact, to be the people's appointee and agent, that it is a good rhetorical emphasis to speak of her prerogative as something NON-popular, and therefore to be distrusted. By the very nature of our Government our executive cannot be liked and trusted as the Swiss or the American is liked and trusted.

Out of the same history and the same results proceed our tolerance of those "local authorities" which so puzzle many foreigners. In the struggle with the Crown these local centres served as props and fulcrums. In the early Parliaments it was the local bodies who sent members to Parliament, the counties, and the boroughs; and in that way, and because of THEIR free life, the Parliament was free too. If active, real bodies had not sent the representatives, they would have been powerless. This is very much the reason why our old rights of suffrage were so various; the Government let whatever people happened to be the strongest in each town choose the members. They applied to the electing bodies the test of "natural selection"; whatever set of people were locally strong enough to elect, did so. Afterward, in the civil war, many of the corporations, like that of London, were important bases of resistance. The case of London is typical and remarkable. Probably, if there is any body more than another which an educated Englishman now-a-days regards with little favor, it is the Corporation of London. He connects it with hereditary abuses perfectly preserved, with large revenues imperfectly accounted for, with a system which stops the principal city government at an old archway, with the perpetuation of a hundred detesta-

ble parishes, with the maintenance of a horde of luxurious and useless bodies. For the want of all which makes Paris nice and splendid we justly reproach the Corporation of London; for the existence of much of what makes London mean and squalid we justly reproach it too. Yet the Corporation of London was for centuries a bulwark of English liberty. The conscious support of the near and organized capital gave the Long Parliament a vigor and vitality which they could have found nowhere else. Their leading patriots took refuge in the city, and the nearest approach to an English "sitting in permanence" is the committee at Guildhall, where all members "that came were to have voices." Down to George III.'s time the city was a useful centre of popular judgment. Here, as elswhere, we have built into our polity pieces of the scaffolding by which it was erected.

De Tocqueville indeed used to maintain that in this matter the English were not merely historically excusable, but likewise politically judicious. He founded what may be called the *culte* of corporations. And it was natural that in France, where there is scarcely any power of self-organization in the people, where the *préfet* must be asked upon every subject, and take the initiative in every movement, a solitary thinker should be repelled from the exaggerations of which he knew the evil, to the contrary exaggeration of which he did not. But in a country like England, where business is in the air, where we can organize a vigilance committee on every abuse and an executive committee for every remedy — as a matter of political instruction, which was De Tocqueville's point — we need not care how much power is delegated to outlying bodies, and how much is kept for the central body. We have had the instruction municipalities could give us: we have been through all that. Now we are quite grown up, and can put away childish things.

The same causes account for the innumerable anomalies of our polity. I own that I do not entirely sympathize with the horror of these anomalies which haunts some of our best critics. It is natural that those who by special

and admirable culture have come to look at all things upon the artistic side should start back from these queer peculiarities. But it is natural also that persons used to analyze political institutions should look at these anomalies with a little tenderness and a little interest. They MAY have something to teach us. Political philosophy is still more imperfect; it has been framed from observations taken upon regular specimens of politics and States; as to these its teaching is most valuable. But we must ever remember that its DATA are imperfect. The lessons are good where its primitive assumptions hold, but may be false where those assumptions fail. A philosophical politician regards a political anomaly as a scientific physician regards a rare disease — it is to him an "interesting case." There may still be instruction here, though we have worked out the lessons of common cases. I cannot, therefore, join in the full cry against anomalies; in my judgment it may quickly overrun the scent, and so miss what we should be glad to find.

Subject to this saving remark, however, I not only admit, but maintain, that our Constitution is full of curious oddities, which are impeding and mischievous, and ought to be struck out. Our law very often reminds one of those outskirts of cities where you cannot for a long time tell how the streets come to wind about in so capricious and serpent-like a manner. At last it strikes you that they grew up, house by house, on the devious tracks of the old green lanes; and if you follow on to the existing fields, you may often find the change half complete. Just so the lines of our Constitution were framed in old eras of sparse population, few wants, and simple habits; and we adhere in seeming to their shape, though civilization has come with its dangers, complications, and enjoyments. These anomalies, in a hundred instances, mark the old boundaries of a constitutional struggle. The casual line was traced according to the strength of deceased combatants; succeeding generations fought elsewhere; and the hesitating line of a half-drawn battle was left to stand for a perpetual limit.

I do not count as an anomaly the existence of our double government, with all its infinite accidents, though half the superficial peculiarities that are often complained of arise out of it. The coexistence of a Queen's seeming prerogative and a Downing Street's real government is just suited to such a country as this, in such an age as ours.*

* So well is our real government concealed, that if you tell a cabman to drive to "Downing Street" he most likely will never have heard of it, and will not in the least know where to take you. It is only a "disguised republic" which is suited to such a being as the Englishman in such a century as the nineteenth.

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